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INDIANA HISTORICAL COLLECTIONS

# CONSTITUTION MAKING IN INDIANA

A Source Book of Constitutional Documents  
with Historical Introduction and  
Critical Notes

BY

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Volume II  
1851-1916

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THE act of the Indiana General Assembly signed by Governor Ralston on March 8, 1915, creating the Indiana Historical Commission, assigned to that body as one of its duties to collect and publish documentary and other materials on the history of Indiana. The law provides that these volumes should be printed and bound at the expense of the State and be made available to the public. Copies are offered at practically the cost of producing the volumes, the proceeds to go into the State treasury for the use of the Historical Commission in producing other volumes. One copy is to be furnished at the expense of the Commission to each public library, College and Normal School in the State.

Two hundred copies are to be furnished to the Indiana State Library and two hundred copies to the Historical Survey of Indiana University, for purposes of exchange with other states for similar publications. Of the \$25,000 appropriated to the Commission for Centennial purposes, \$5,000 were permitted to be used for historical publications.

#### INTRODUCTION--1975

In 1971 the Indiana Historical Bureau reprinted Volume I of *Constitution Making in Indiana* covering the period 1780-1851. At long last Volume II covering the period 1851-1916 can be reprinted as planned. As Kettleborough indicated, he gathered documentary material "designed to illustrate and interpret the constitutional growth and development of the State of Indiana from the beginnings of its institutional history to " 1916 (I, vii). The numbering of items is continuous throughout the two volumes; the general Introduction, the Constitution of 1816, and the Constitution of 1851 are included in Volume I. The Introduction is available as a separate publication from the Indiana Historical Bureau.

As preparations for reprinting Volume II progressed, it became obvious that revision was needed both in the typography and substance of the volume. Ideally a new edition should have been prepared; considerations of time, money, and usage combined to produce this "Reprint, with Corrections." The user is warned that documentary material contained herein generally does not represent a completely accurate transcription of the original. Although the wording included is generally accurate, capitalization is haphazard and elipses are not satisfactorily indicated.

The present editors adopted the following procedures and policies in readying this volume for the press. The majority of the multitude of broken type has been allowed to remain when the words seemed understandable. All misspelled words and names located have been corrected. Such errors were generally corrected without notice unless they were carried over from the original source. Additions or explanations by the present editors are contained within double parentheses often as footnotes indicated with an asterisk. Citations to legal sources reproduced here have been standardized.

Item 521, the Indiana Supreme Court decision on *Ellingham v. Dye*, 178 Ind. 336, 99 N.E. 1, requires some special mention to prevent any confusion of sources. From internal evidence of form of citations and several spelling errors (which have been corrected) the opinions on pp. 454-531 are basically taken from the version in the North Eastern Reporter (99 N.E. 1) but are shortened and altered in generally minor ways. The North Eastern Reporter differs substantially in two aspects from the definitive version of the case which was published later in the Indiana Supreme Court Reports (178 Ind. 336). The sentence quoted in note 5, page 479 appears 99 N.E. 1, 14. The sentence in text at note 6, page 479 appears 178 Ind. 336, 373; the sentence in note 6, page 479 appears 99 N.E. 1, 14. Kettleborough could have talked to Judge Cox regarding the change.



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Amendment of the Constitution  
of 1851





## VOLUME II.

### PART V.

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#### AMENDMENT OF THE CONSTITUTION OF 1851.

The Constitution of 1851 became effective on November 1 of that year. There are two methods by which this Constitution may be amended. The inherent power of calling a Constitutional Convention to alter, revise or amend the Constitution always resides in the people. In addition to this method, the Constitution itself provides that one or more amendments to the Constitution may be proposed by any General Assembly; if the proposed amendment is adopted by a majority vote of each House, it is then formally referred to the succeeding General Assembly, and if adopted by a majority vote of each House of that General Assembly it is referred to the people for ratification. If the amendment is ratified by a majority of the electors voting at the election at which the amendment is submitted, it becomes a part of the Constitution. During the sixty-five years which have elapsed since the adoption of the present Constitution, the question of calling a convention of delegates to frame a new Constitution has been submitted to the electors on only two occasions. Owing to the dissatisfaction aroused by the suffrage provisions an attempt was made in 1859 to call a convention to effect a revision of the Constitution. Only a fraction of the returns of the election are available, but from these we know that the proposition was overwhelmingly defeated. Although numerous other attempts were made to submit the question of calling a Constitutional Convention, none was successful until 1914, when the question was again submitted and was again defeated by a vote of 235,140 to 338,947. The first amendment adopted was in 1873. This amendment forbade the General Assembly from assuming any liability connected with the Wabash and Erie Canal. The opinion of the electorate was practically unanimous on this question; both political parties had repeatedly declared in favor of such an amendment, and it was adopted with but few dissenting votes. The second amendment or group of amendments were adopted in 1881. These amendments effected changes in the suffrage qualifications of voters, extended the right of suffrage to negroes, made a few changes in the court sys-

tem, authorized the General Assembly to enact a registration law and prescribed a few other changes. These amendments were submitted to the voters for the first time in 1880. Each amendment received more votes than were cast against it, but none of the amendments received in its favor a majority of the votes cast at the election at which they were submitted. The question then arose whether the amendments had been constitutionally and legally adopted, and the question was determined by the Supreme Court in *State v. Swift*, the first and one of the most celebrated constitutional cases in the history of the State. In this case it was definitely determined that a proposed amendment to the Constitution must receive the affirmative vote of a majority of all votes cast at the election to insure its adoption, but that if submitted at a special election, the votes cast at such election might be considered as the total number of votes in the State. Accordingly, these same amendments were resubmitted to the electors at a special election in 1881, and adopted. Of the proposed amendments which have actually been submitted to the people since 1881, the lawyers amendment, prescribing the qualifications for the practice of law, has been most frequently before the voters. At the general election of November 6, 1900, the lawyers amendment and the Supreme Court amendment, providing for an increase in the membership of the Supreme Court, were submitted to the electors for ratification or rejection. Both amendments received an affirmative majority, but neither received a majority of the vote cast at the election. The question ultimately found its way to the Supreme Court and that tribunal decided at the November term, 1900, that the amendments had neither been adopted nor rejected and that therefore they were still pending and were obstructive of future amendments. This decision held as a controlling opinion until 1913, when the Supreme Court, in the case known as *In re Boswell*, held that an amendment which had been voted on but which had failed to receive a majority of all the votes cast at the election, was rejected and therefore the way was clear for the submission of other amendments. During the past few years, the two most important attempts to procure constitutional amendments were the so-called Marshall Constitution which was held an invalid exercise of legislative power, in *Ellingham v. Dye*, in 1912, and the so-called Stotsenburg amendments which were finally disposed of in 1915.

THE THIRTY-SIXTH AND THIRTY-SEVENTH GENERAL ASSEMBLIES  
(1851 AND 1853)

As the Constitutional Convention of 1850 had consisted of 95 Democrats and only 55 Whigs, the Constitution which they framed was generally regarded as the handiwork of the Democrats. The first two General Assemblies which were elected after the adoption of the present Constitution were predominantly Democratic and, with the following exceptions, no formal attempt was made to alter or amend any of the provisions of the new instrument of government.

**153. Judiciary Committee Report on Amending Process of Constitution (December 11, 1851).**

On December 11, 1851, the Judiciary Committee of the House submitted the following report on the character of the amending process of the Constitution which was concurred in (see Document No. 155).

*[Documentary Journal, Thirty-Sixth Session, Part II, 333.]*

The Committee on the Judiciary, to whom was referred Bill of the House No. 16, "A bill to amend the first, second, and third sections of an act entitled 'An act for the more effectual, just, and equal assessment and valuation of the personal property, moneys, rights, credits, effects, and corporation stocks in the State of Indiana,—approved February 13th, 1851—and amendment pending thereto,' " with instructions to inquire whether the provisions of the new Constitution require a recital in the bill of the sections proposed to be amended or stricken out, have the same under advisement, and have directed me to report that it is the unanimous opinion of the committee that the following language, "but the act revised or section amended shall be set forth and published at full length," being the last clause of Section 21, of Article 4, of the Constitution, does not require or contemplate that the act to be revised or the section to be amended should be set forth in the law intended to accomplish either of those proposed, but that a law setting forth the act as revised, or the section as amended, would be in conformity with the spirit and purport of said clause; this, in the opinion of the committee, is not only a reasonable construction of the phraseology of said section but conforms to its spirit and the design of its adoption. It is further the unanimous opinion of the committee, that in repealing a section of an act, a recital of the section to be repealed or stricken out is not required or contemplated by any provisions of the Constitution; therefore, the committee report back the

bill and amendment, and recommend concurrence in the proposed amendment.

**154. State Boundaries (December 16, 1851).**

During the 36th session of 1851, the following resolution, relative to State boundaries, was presented in the Senate on December 16, but there was apparently no report.

*[Senate Journal, Thirty-sixth Session, 110.]*

*Resolved*, That so much of the existing laws as relate to the boundaries of this State and of the several counties therein, be referred to the Committee on Federal Relations, and that said committee be instructed to inquire whether any changes are necessary in the several acts relating thereto, to make the same conform to the present Constitution, and to report by bill or otherwise.

**155. Revision and Amendment of Acts; Duration of the General Assembly; and Emergency Clauses (1853).**

During the 37th session of 1853, three questions relative to the construction of the Constitution arose and were the subjects of legislative consideration. All three were considered in the House. On January 12, 1853, a resolution was adopted, "That the Committee on the Judiciary be instructed to inquire into and report upon the proper construction to be given to Section 21, Article 4, of the Constitution of this State, concerning the revision and amendment of acts, whether both the old and the new act or the revised act alone shall be set out." The second question involved the duration of a regular session of the General Assembly. The first session of the General Assembly under the present Constitution, was unlimited as to its duration. At the second session of 1853, very little legislation was necessary, and the session closed before the expiration of the 61 days, Sundays included. However, in order to obtain a solution to this question, on January 27, a resolution was adopted, "That the Committee on the Judiciary be requested to report to this House the intent and meaning of that portion of Section 29, Article 4, of the Constitution of this State, relative to the extension of the term of the General Assembly." On February 7, it was resolved, "that so much of Section 29 of Article 4, of the Constitution of this State as reads as follows to-wit: 'No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days,' is construed by this House to mean sixty-one consecutive days." On the following day, February 8, the Judiciary Committee submitted a report, in which all members unanimously concurred, that a session consisted of 61 consecutive days, Sundays included, and not 61 days of actual sitting, and in this opinion the House concurred.

[*House Journal, Thirty-seventh Session, 449.*]

The Committee on the Judiciary, who were instructed by a resolution of the House to report their opinion of the intent and meaning of that portion of Section 29, Article 4, of the Constitution of this State in relation to the extension of the term of the General Assembly, have had the subject under consideration; and have directed me to make the following report: The language of that portion of the Constitution referred to, is as follows: "No session of the General Assembly except the first under this Constitution shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days."

The committee understand the question presented by the resolution to be as to whether or not Sundays and other days when the General Assembly may not actually sit, may be computed as part of the term of sixty-one days.

They are of the opinion that the word "session," as used in this section of the Constitution, embraces all the time intervening between the first day of meeting and the final adjournment of the legislature—whether either or both branches may have been actually sitting during all of that period or not, and that the time covered by temporary adjournment is to be considered as part of the period of session.

The doctrine seems to have been established as applicable to the British Parliament. "The session of Parliament continues until it be prorogued, and breaks not off by adjournment." "An adjournment is no more than the continuance of the session from one day to another;" "an adjournment is by each house, and the session continues notwithstanding such adjournment." Attaching this meaning to the word "session," it seems clear that the Constitution in limiting the session to the term of sixty-one days, means sixty-one consecutive days and not sixty-one days of actual sitting. It is also a general principle that when a given number of days are prescribed by law for the performance of any act or the discharge of any duty, Sundays, unless specially excepted, are computed; this is familiar in construction of all statutes prescribing terms, as for the service and return of writs, taking appeals and the like. Sundays are considered as part of the terms of the English courts of law. To apply a different rule of construction in the present case, might defeat the object of this provision of the Constitution. The same reason that would exclude Sundays from the computation, would exclude other days when either



branch should not be in actual session. Either house has power under the Constitution to adjourn for three days, without the consent of the other, if then, one branch should adjourn for three days, while the other remained in session, it would happen that when the branch not so adjourning had set sixty-one days, the other would have set but fifty-eight days, and as the General Assembly would not have been in session sixty-one days, until each branch composing it had been that long in session, it might happen that by frequent adjournments of one branch, the session would be greatly prolonged. Your committee therefore submit it as their opinion that the present session of the General Assembly is limited to sixty-one consecutive days from the 6th day of January, and consequently, that it cannot extend beyond the 7th day of March.

On February 11, a resolution was adopted, "that the Judiciary Committee be instructed to inquire, whether when an enactment contains an emergency clause, it is necessary to make mention of the same in the title thereof."

Under the influence of the Know Nothing movement, considerable sentiment had manifested itself against the suffrage provisions granting liberal political rights to aliens. Other constitutional amendments desired were designed to change the method of amending acts, to alter the provision relative to the time when acts shall take effect, to remove the limitations on legislative sessions, to remove the restrictions on the holding of more than one office, to restore local legislation in a modified form and to abolish the office of State Superintendent of Public Instruction.

### THE THIRTY-EIGHTH GENERAL ASSEMBLY (1855)

The thirty-eighth General Assembly of 1855 consisted of 26 Democrats and 24 Republicans or Fusionists, in the Senate, and 43 Democrats and 57 Republicans, in the House. This was the first opportunity the Republicans had had to officially express their disapproval of certain provisions of the Constitution and the opportunity was not neglected.

#### 156. Suffrage Qualifications; Method of Amending Acts; Time When Acts Shall Take Effect; Removal of Limitations on Legislative Sessions; Holding More Than One Office; Annual Sessions of the General Assembly; Restoration of Local Legislation; and Common Schools (January 8, 1855).

The most important constitutional measure of the 38th session was introduced by Mr. David Kilgore, the Republican Speaker of the House, on January 8, 1855. On January 9, the bill was referred to the Judiciary Committee. The amendments proposed in this bill were designed to prevent unnaturalized aliens from voting, to change the existing method of amending

acts, to alter the provision relative to the time when acts shall take effect, and to remove the limitation on legislative sessions.

[*House Journal, Thirty-eighth Session, 56.*]

House Bill No. 4. A bill to amend the Constitution of the State of Indiana by altering the second section of Article 2, and by striking out the 21st section of Article 4, and to alter the 28th section of Article 4, and by striking out the latter clause of Section 29, Article 4.

On February 14, the committee reported "that a joint resolution is the proper form for such amendments" and they therefore reported a joint resolution as a substitute for the bill and recommended its passage. A motion to indefinitely postpone the resolution was rejected by a vote of 33-52. On February 17, the resolution was recommitted to the Judiciary Committee for reconsideration. The provisions of this resolution were: to prohibit foreigners from voting who had not been naturalized under the laws of Congress; to allow officers in the militia, not receiving an annual salary, and deputy postmasters whose pay did not exceed \$90 per annum, to hold another office; to provide annual sessions of the General Assembly, unrestricted as to length; in amending acts, to require that the section or act as amended, only, be set forth; to provide that laws need not necessarily be uniform in their operation throughout the State.

[*House Journal, Thirty-eighth Session, 475.*]

House joint resolution No. 11. A joint resolution in relation to amending the Constitution of the State.

Apparently, on recommendation of the committee, House joint resolution No. 11, was divided into eight separate parts, each having a distinct subject matter and each numbered as a separate resolution, as follows: House joint resolution No. 15, 16, 17, 18, 19, 20, 21 and 22. The first of these resolutions was considered on March 2. It was designed to change the residential and other qualifications of foreign voters, and passed the House by a vote of 55-29. The passage of this resolution was reported to the Senate but apparently no action was taken by that body.

[*House Journal, Thirty-eighth Session, 781.*]

Joint resolution No. 15. A joint resolution to amend the second section of the second article of the Constitution of the State of Indiana.

The second of these resolutions was then taken up for consideration. A motion was made to amend this resolution by striking out the thirteenth article of the Constitution, which provided for the colonization of the negroes. The resolution and the motion not germane to the question were both laid on the table by a vote of 61-19. Apparently, this proposed amendment was intended to permit militia officers, not receiving an annual salary, and deputy postmasters whose annual salary did not exceed \$90, to hold another office.

[*House Journal, Thirty-eighth Session, 781.*]

Joint resolution No. 16. A joint resolution to amend the ninth section of the second article of the Constitution of the State of Indiana.

The third resolution, apparently designed to permit annual sessions of

the General Assembly, unlimited as to length, was rejected by a vote of 38-44.

[*House Journal, Thirty-eighth Session, 783.*]

Joint resolution No. 17. A joint resolution to amend the ninth section of the fourth article of the Constitution of the State of Indiana.

The fourth resolution, which proposed to change the method of amending acts, was lost for want of a constitutional majority, the vote being 44-30.

[*House Journal, Thirty-eighth Session, 784.*]

Joint resolution No. 18. A joint resolution to amend the twenty-first section of the fourth article of the Constitution of the State of Indiana.

Because of lack of time the remaining resolutions were laid on the table. By inference from former discussions, it is tolerably safe to conclude that the changes proposed by these resolutions, in order, were as follows: restoring a modified form of local legislation by providing that laws need not be of uniform operation throughout the State; changing the time when acts take effect; removing the limitation on legislative sessions; and effecting a change in the common school system.

[*House Journal, Thirty-eighth Session, 784.*]

Joint resolution No. 19. A joint resolution to amend the twenty-third section of the fourth article of the Constitution of the State of Indiana.

Joint resolution No. 20. A joint resolution to amend the twenty-eighth section of the fourth article of the Constitution of the State of Indiana.

Joint resolution No. 21. A joint resolution to amend the twenty-ninth section of the fourth article of the Constitution of the State of Indiana.

Joint resolution No. 22. A joint resolution to amend the first section of the eighth article of the Constitution of the State of Indiana.

#### **157. Superintendent of Public Instruction (January 16, 1855).**

On January 16, 1855, Mr. David J. Davis, a Democrat, introduced a bill in the House to repeal Section 8 of Article 8 of the Constitution, which provided for the election of a State Superintendent of Public Instruction. On January 17 the bill was referred to the Judiciary Committee; on January 22, the committee reported the bill back to the House and recommended that it be indefinitely postponed, and the House concurred in this report.

[*House Journal, Thirty-eighth Session, 131.*]

Bill No. 53. A bill to repeal Section 8 of the eighth article of the Constitution of Indiana, relative to the Superintendent of Public Instruction.

#### **158. Reducing the Number of Senators and Representatives; Compensation (January 23, 1855).**

Introduced in the House on January 23, by Mr. Horatio C. Newcomb, a Republican.

[*House Journal, Thirty-eighth Session, 201.*]

*Resolved*, That in the opinion of this House, the number of senators and representatives could be reduced without detriment to the public service; and the Committee on Apportionment is hereby instructed to provide in the bill to be reported by them apportioning the number of senators and representatives among the several counties of this State, for thirty senators and seventy representatives, and no more; and that they provide in said bill that the pay of members of the legislature be raised to four dollars per day.

On January 24, the resolution was taken up for consideration. An unsuccessful attempt was made to amend the resolution so as to provide for 24 senators and 100 representatives. The following substitute, substantially identical, was adopted and laid on the table. The provision fixing the salary of members of the General Assembly at three dollars per day was adopted by a vote of 51-29.

[*House Journal, Thirty-eighth Session, 224.*]

*Resolved*, That the number of senators and representatives can be reduced without detriment to the public service, and that the Committee on Apportionment of the Senate and House of Representatives be instructed to provide in the bill reported, apportioning the number of senators and representatives among the several counties of this State, for thirty senators and seventy representatives, and no more, and that they provide that the pay of members of the legislature be raised to three dollars a day, and that the Senate be informed of the adoption of this resolution, and their concurrence requested.

#### 159. Suffrage of Aliens (February 5, 1855).

On February 5, Mr. Solomon Meredith, a Republican, introduced a memorial in the House upon the subject "of the right of suffrage as extended to foreigners," which was referred to a select committee of three. Apparently no report was made. On February 8, Mr. David F. Huffstetter, a Democrat, introduced a joint resolution in the House on the naturalization of foreigners, which was defeated on February 17 by a vote of 35-46. The exact provisions of this memorial and resolution are not indicated.

[*House Journal, Thirty-eighth Session, 387.*]

No. 9. A joint resolution on the subject of naturalization laws.

#### 160. Common School System (February 14, 1855).

Introduced in the House on February 14 by Mr. James M. Frazier,

a Republican; on February 19, the resolution was considered, a slight change was made, and it was then laid on the table. It is impossible to determine from the Journal or other contemporary literature the character of the change proposed.

[*House Journal, Thirty-eighth Session, 481.*]

Joint resolution No. 14. A joint resolution proposing to amend Article 8 of the State Constitution.

#### 161. Negro Colonization and Discrimination (March 2, 1855).

On March 2, Mr. John Brazelton, a Republican, introduced a resolution in the House to amend the Constitution by repealing Article 8, relative to negro rights and colonization; only a short time before, on the same day, Brazelton had tried unsuccessfully to provide for the repeal of this article (see Document No. 156). The resolution was rejected by a vote of 35-43.

[*House Journal, Thirty-eighth Session.*]

Joint resolution No. 26. A joint resolution to repeal the thirteenth article of the Constitution of the State of Indiana. ((p. 785))

#### THE THIRTY-NINTH GENERAL ASSEMBLY (1857).

The political complexion of the thirty-ninth General Assembly was as follows: Senate—26 Republicans, 23 Democrats and 1 American. House—63 Democrats, 35 Republicans and 2 Americans. Out of the political agitation fostered by the Know Nothing movement and the temperance propaganda had evolved a demand for measures restricting the political rights of unnaturalized aliens and the suppression of the liquor traffic. The Democratic State convention of January 8, 1856, adopted a plank favoring the continuance of the existing naturalization laws under which the speedy assimilation of aliens could be best accomplished. The Republicans in their convention of May 1 went on record in favor of a five year probation period, and in a love feast held in Indianapolis on January 7, 1857, the day before the General Assembly convened, a resolution was adopted which pledged the Republican members of the General Assembly to the proposition "That the Constitution of Indiana ought to be so amended as to limit the right of suffrage to citizens, either by birth or naturalization, under the present laws of Congress." On the same day the Association of Republican Editors of Indiana adopted substantially the same resolution. A month later, on February 7, 1857, the Convention of Americans, assembled in Indianapolis, adopted a resolution to the same purpose. Other amendments desired were the following: the removal of the limitations on sessions of the General Assembly; a restricted form of local legislation; and removal of the requirement that bills be read three several times.

#### 162. Political Resolutions Concerning Suffrage Qualifications of Unnaturalized Aliens (1856).

Both of the leading parties went on record in 1856 on the subject of the



political rights of unnaturalized aliens. At its convention held in Indianapolis on January 8, 1856, the Democratic Party adopted the following resolution:

[*Indianapolis Sentinel, January 10, 1856.*]

Our naturalization laws \* \* \* have been and are irresistible inducements and invitation to the inhabitants of less favored lands to become citizens of ours; and that past experience, just, sound policy, and national pride, all concur to favor the continuance of our present naturalization laws; that if any abuses have grown up under these laws, they have sprung from their imperfect execution alone and not from inherent defects in the laws themselves, and that we are in favor of that policy which will soonest assimilate naturalized citizens with the mass of our people, and opposed to that anti-American and illiberal policy which proscribes the foreign born citizen for the accident of birth, and drives him in self-defense to antagonism with our native born citizens in feeling, political opinions and conduct.

The Republicans in their convention held in Indianapolis on May 1 adopted the following resolution:

[*New Albany Daily Ledger, May 3, 1856.*]

*Resolved*, That we are in favor of the naturalization laws of Congress, with the five years probation, and that the right of suffrage should accompany and not precede naturalization.

At a Republican love feast held in Indianapolis on January 7, 1857, to formulate a plan of operation for the Republican members of the legislature, the following resolution was adopted:

[*Indianapolis Journal, January 8, 1857.*]

*Resolved*, That the Constitution of Indiana ought to be so amended as to limit the right of suffrage to citizens, either by birth or naturalization, under the present laws of Congress.

On the same day the Association of Republican Editors of Indiana adopted a similar resolution:

[*Indianapolis Journal, January 8, 1857.*]

*Resolved*, That the Constitution of Indiana should be so amended as to limit the right of suffrage and holding office to citizens of the United States, either by birth or by naturalization.

The convention of Americans which met in Indianapolis on February 17, adopted a resolution of similar import.

[*Indianapolis Journal and Sentinel*, February 18, 1857.]

*Resolved*, That it is wholly incompatible with the genius and spirit of our American institutions to permit aliens to exercise the right of suffrage, and hold office or place under the Federal, State or Territorial governments. Hence the Constitution of Indiana should be so amended as to limit the right of suffrage, and to hold office, to those only who are citizens of the United States, either by birth or naturalization, according to the laws of Congress.

In his biennial message to the General Assembly, the Governor urged vigorously the adoption of more stringent measures to insure the purity of the ballot box.

**163. Residential Qualifications for Suffrage (January 13, 1857).**

On January 13, a resolution of inquiry, relative to residential qualifications for suffrage, was introduced in the Senate and adopted.

[*Senate Journal*, *Thirty-ninth Session*, 74.]

*Resolved*, That the Judiciary Committee be instructed to inquire into, and report to the Senate at an early date of this session, whether, under Article 2 and Section 2 of the Constitution of this State, it is within the power of the General Assembly to enact a law defining the requisites constituting a residence, and the length of the same, in order to the exercise of the right to vote at the general elections.

**164. Residential and Other Qualifications for Suffrage (January 19, 1857).**

Introduced in the House on January 19, by Mr. John W. Wright, an American; on January 20, the resolution was indefinitely postponed by a vote of 62-31. By this proposed amendment foreigners would be required to be naturalized citizens, and to have a residence of forty days in the county and ten days in the precinct before voting.

[*House Journal*, *Thirty-ninth Session*, 174.]

House Joint Resolution No. 5. A joint resolution proposing certain amendments to the Constitution of the State.

**165. Number of Senators and Representatives (January 21, 1857).**

On January 21, a resolution fixing the number of senators at 30 and the number of representatives at 70 was adopted by the House.

[*House Journal, Thirty-ninth Session, 199.*]

*Resolved*, That the Committee on Apportionment inquire into the expediency of reducing the number of senators and representatives among the several counties of this State to thirty senators and seventy representatives, and report by bill or otherwise.

**166. Residential Qualifications for Suffrage (January 23, 1857).**

On January 23, 1857, Mr. Francis P. Smith, a Democrat, introduced a bill in the House to safeguard the right of suffrage. On January 26, the bill was referred to the Judiciary Committee; on February 11, the bill was reported back to the House with the recommendation that it pass. This bill was designed to amend the Constitution so as to require a residence qualification of voters of forty days in the township and ten days in the precinct. On third reading, on February 16, several amendments were offered. One amendment provided a residence of twenty days in the county before voting. This amendment was rejected. A second amendment, requiring a residence of forty days in the county and ten days in the township, was rejected by a vote of 29-54. A third amendment, proposed by a Republican, was designed to limit the right of suffrage to native born and naturalized citizens. By invoking the previous question, this amendment was rejected. The bill failed to pass at this time by a vote of 49-38, a constitutional majority not being obtained. On March 4, the bill passed by a vote of 63-23. The Senate never took any action on the bill besides formally receiving it.

[*House Journal, Thirty-ninth Session, 243.*]

No. 101. A bill to amend Section 2 of Article 2 of the Constitution of the State.

**167. Annual Unlimited Sessions of the General Assembly; Annual Elections and Local Legislation (January 27, 1857).**

On January 27, Mr. John W. Blake, a Democrat, introduced a bill in the House to amend Sections 3 and 9 of Article 4 of the Constitution; on January 28, the bill was referred to the Judiciary Committee, who, on February 13, reported favorably; on February 21, the bill was referred to a select committee of three with instructions to make certain minor changes, and on February 24, the committee reported the bill back to the House. The constitutional changes proposed in this bill were to provide for annual sessions of the legislature, unlimited as to length, annual elections and local legislation. An amendment proposed by Mr. James D. Williams, a Democrat, to limit legislative sessions to forty days, and to insert the following section in lieu of Article 4, Section 3, was rejected by a vote of 36-46:

[*House Journal, Thirty-ninth Session, 776.*]

Sec. 3. Senators shall be elected for the term of three years and representatives for the term of one year from the day next

after their election: *Provided*, That the first meeting of the General Assembly after the adoption of this amendment, that senators shall be divided by lot into three equal classes as nearly as may be, and the seats of senators of the first class shall be vacated at the expiration of one year, those of the second class at the expiration of two years, and those of the third class at the expiration of three years; and in case of increase in the number of senators, they shall be so annexed by lot, to one of the three classes, as to keep them as nearly equal as possible.

Later the same day this proposed section was agreed to, but there was apparently no further action on the bill.

*[House Journal, Thirty-ninth Session, 250.]*

No. 123. A bill to amend the third and ninth Sections of the fourth Article of the Constitution of the State of Indiana.

**168. Residence Suffrage Qualifications of One Year (February 6, 1857).**

On January 13, that part of the Governor's message relating to illegal voting was referred to the Committee on Rights and Privileges, consisting of four Democrats and three Republicans. On February 6, this committee reported a bill. On February 12, the bill was referred to the Judiciary Committee; on February 17, the committee reported favorably on the bill and recommended its passage; and on February 26 the bill passed the House by a vote of 68-18. Apparently, this bill prescribed a year's residence in the State before the right of suffrage was acquired. On March 3, when the bill was under consideration in the Senate, Mr. John Yaryan, a Republican, moved to amend the bill to require a residence of five years before voting. Apparently the measure was considered no further.

*[House Journal, Thirty-ninth Session, 424.]*

House bill No. 175. A bill to amend the second Section of Article 2 of the Constitution of the State of Indiana.

**169. Number of Senators and Representatives (February 9, 1857).**

On February 9, a resolution was introduced in the Senate fixing the number of senators at 33 and the number of representatives at 66; this resolution was adopted on February 19 by a vote of 23-18.

*[Senate Journal, Thirty-ninth Session, 314.]*

WHEREAS, It is the duty of the General Assembly of Indiana to do all in its power, consistent with sound policy and right, to lighten the burthen of taxation; AND WHEREAS, The General

Assembly as now composed by law, consists of 150 members; AND WHEREAS, A less number would do the business of legislation with more dispatch equally as well, and perhaps better; therefore,

*Resolved*, That it is the sense of the Senate that the number of representatives to the House should be reduced to sixty-six and of the Senate to thirty-three.

**170. Residential Suffrage Qualifications (February 9, 1857).**

Introduced in the Senate on February 9, by Mr. P. S. Sage, an American.

[*Senate Journal, Thirty-ninth Session, 315.*]

Senate joint resolution No. 4. A joint resolution concerning Section 2 of Article 2 of the Constitution of the State of Indiana.

On February 13, this resolution was referred to a select committee of three, one Democrat, one Republican and one American. On February 24, a majority of the committee reported the following substitute.

[*Senate Journal, Thirty-ninth Session, 529.*]

In all elections not otherwise provided for in this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in this State six months immediately preceding such election, shall be entitled to vote in the township or precinct where he shall have resided thirty days immediately preceding such election.

The minority report, submitted by the Democratic member, was not made until March 5, and probably represents the Democratic sentiment on the question.

[*Senate Journal, Thirty-ninth Session, 669.*]

A minority of the select committee to whom was referred Senate joint resolution No. 4, dissenting from the conclusions of the majority, beg leave to submit the following report:

The undersigned believes that inasmuch as our Constitution was adopted by so large a majority of the voters of Indiana, that it would now be inexpedient to change the same, especially as no petitions have been presented to the General Assembly praying such change as is now proposed.

Another reason why the undersigned think such proposed change should not be adopted is, that now a large number of foreign born persons now residing in this State, and now having



and exercising the right of suffrage under the present Constitution would, by this proposed change, be disfranchised.

The undersigned does not believe that such a course would be either wise, politic, or just, in view of the circumstances, but that on the contrary it would be productive of evil. That it would increase and arouse jealousies between different classes of the inhabitants of this State; therefore, in view of all these facts, the undersigned believes that said joint resolution should not pass.

The consideration of the measure was discontinued.

**171. Guaranteeing Each County One Representative (February 12, 1857).**

Presented by Mr. Andrew J. Neff, a Democrat, on February 12, and rejected at once.

*[House Journal, Thirty-ninth Session, 521.]*

*Resolved*, That the Judiciary Committee enquire into the expediency of so amending the Constitution of the State of Indiana, so that each county shall be entitled to one representative in the State legislature, and that the committee report by bill or otherwise.

**172. Platform of Anti-Administration Democrats—Wabash and Erie Canal (February 23, 1858).**

The State convention of the Anti-Administration Democrats was held in Indianapolis on February 23, 1858, and the following resolution relative to the Wabash and Erie Canal was adopted:

*[Indiana Daily State Sentinel, February 24, 1858.]*

That the Democracy of Indiana are opposed to the retrocession of the Wabash and Erie Canal, as well as to any new arrangement with the bondholders thereof.

**173. Republican Platform of 1858—Wabash and Erie Canal (March 4, 1858).**

The Republican Party, assembled in convention in Indianapolis on March 4, 1858, adopted the following resolution relative to the bonds of the Wabash and Erie Canal:

*[Indianapolis Journal, March 5, 1858.]*

That we will always resist the scheme of selfish and un-

scrupulous persons, high in power, having for its object the re-transfer of the Wabash and Erie Canal from bondholders to the State.

THE SPECIAL SESSION OF 1858 (NOVEMBER 20-DECEMBER 25, 1858).

The special session of 1858 began on November 20, and ended on December 25. It was called to make appropriations for the support of the State institutions which the regular session had failed to do. The Senate consisted of 25 Republicans and 25 Democrats; the House of 51 Republicans and 49 Democrats.

**174. Wabash and Erie Canal (November 22, 1858).**

Introduced in the House on November 22, 1858.

*[House Journal, Special Session, 1858, 21.]*

*Resolved*, That it is hereby declared, that this House is unalterably opposed to purchasing the Wabash and Erie Canal by the State.

The resolution was then amended, by a vote of 99-0, to read as follows:

*[House Journal, Special Session, 1858, 23.]*

*Resolved*, That it would be unwise and inexpedient to take back, upon any terms, the Wabash and Erie Canal, or to re-assume in any form the debt to satisfy which, it was transferred to the bondholders.

**175. Qualifications of Electors (December 1, 1858).**

Introduced by Mr. William H. Gregory, a Republican, on December 1, 1858; on December 2, referred to the Committee on Rights and Privileges.

*[House Journal, Special Session, 1858, 83.]*

No. 27. A bill to amend the second section of article second of the Constitution of the State of Indiana, so as to confine the qualifications of an elector to every white male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during six months immediately preceding such election, and to vote in the township or precinct wherein he may reside.

On December 13, the committee reported that they considered legislation on this subject unnecessary. The bill was then referred to a select committee

of five, but no further action was had. Revived at the regular session of 1859 (see Document No. 182).

**176. Permitting Local Common School Legislation and Repealing the Constitutional Provision relating to State Superintendent (December 8, 1858).**

Presented in the House on December 8 by Mr. James O. Parks, a Republican; on December 11, referred to the Committee on Judiciary; no further action. This measure was doubtless inspired by the Supreme Court construction of Section 130 of the School Law of 1850 in *Greencastle Township v. Black*, 5 Ind. 557. This statutory provision authorized the voters of any township to vote a tax for school purposes "after the public funds shall have been expended" to any amount not exceeding 50c on the \$100 and 50c poll. This provision was held to be unconstitutional as a violation of the uniform common school provisions of the Constitution.

*[House Journal, Special Session, 1858, 141.]*

No. 59. A bill to repeal the thirteenth paragraph of Section 22, of the fourth article of the Constitution of the State of Indiana, and to amend the first section of the eighth article of the Constitution of the State of Indiana, and to repeal Section 8 of the eighth article of the Constitution of the State of Indiana.

**177. Special Levy of Taxes for School Purposes (December 8, 1858).**

Introduced in the House on December 8, by Mr. Charles D. Murray, a Republican.

*[House Journal, Special Session, 1858, 140.]*

*Resolved*, That the Committee on Rights and Privileges of the Inhabitants of this State be instructed to inquire into the expediency of reporting amendments to the Constitution, to be submitted to the people, granting to incorporated towns and cities, and to civil townships, the right to levy taxes for school purposes.

The report of the committee was made on December 15, but apparently no further action was taken.

*[House Journal, Special Session, 1858, 214.]*

The Committee on the Rights and Privileges of the Inhabitants of the State, to whom was referred a resolution instructing them to inquire into the expediency of reporting amendments to the Constitution to be submitted to the people, granting to incorpo-

rated towns and cities, and to civil townships, the right to levy taxes for school purposes, have had the same under consideration, and have instructed me to report that the committee are of opinion that it is expedient for this General Assembly to propose and agree upon an amendment of the Constitution of the State, so as to authorize the people of incorporated towns and cities to levy taxes for the support of schools within their corporate limits. But the committee are of the opinion that it is inexpedient to change the Constitution so as to authorize civil townships to levy taxes for such purposes.

**178. Resolution of Teachers' Association of Fort Wayne Relative to Free School Amendment (August, 1859).**

The following resolution was adopted by the Teachers' Association of Fort Wayne some time during the month of August, 1859.

*[Indianapolis Journal, August 29, 1859.]*

That we, the undersigned teachers, and friends of education and of a Constitution which shall provide for free schools in every city, town and township where the citizens desire them, pledge ourselves to vote for no man who does not pledge himself to support with all his energy and ability the movement for such a Constitution, and for suitable laws founded thereon, so that free schools may soon be the glory and characteristic of the land of the Hoosiers.

That if we cannot find the right kind of men for whom to vote in any locality, we will meet in each county where such may be the case and nominate and support our own men for office.

**THE FORTIETH GENERAL ASSEMBLY (1859).**

By the date of the meeting of the regular session of the Fortieth General Assembly in 1859, there was a clearly expressed demand for constitutional amendments embracing the following subjects: The qualification of electors and the compulsory registration of voters; local school tax levies and legislation; annual sessions of the legislature; the method of amending the Constitution; prohibiting the sale of intoxicating liquors or providing for local option on the liquor question; changes in the provision relative to the titles of bills; dispensing with three readings of bills; and the salaries of judges.

**179. Prohibiting the Liquor Traffic (January 18, 1859).**

The State Temperance Convention was held in Indianapolis on January 18, 1859. The following amendment was proposed but rejected:

*Resolved, That the legislature be and it is hereby memorialized*

to adopt an amendment to our State Constitution as follows: The legislature should have power to enact a law effectually prohibiting the sale of intoxicating liquors as a beverage, and submitting the same to a vote of the people at a special election.

**180. Local Option (January 18, 1859).**

After the foregoing resolution had been voted down, a resolution in favor of local option was adopted.

*[Locomotive, January 22, 1859.]*

*Resolved*, That in the opinion of this convention each county and corporation in the State should be invested with the power to suppress or control the traffic in intoxicating liquors, as a majority of the citizens in such county or corporation may demand, and to give a practical form to the opinion, we ask the present legislature to initiate such a change in the Constitution of the State as shall enable the counties and corporations aforesaid to manage these matters in their own way.

**181. Calling a Constitutional Convention (March 5, 1859).**

Introduced on January 10, 1859, by Mr. Samuel Davis, a Republican; referred to the Committee on Judiciary on January 11; on January 27, the committee reported an entirely new bill and recommended its passage.

*[House Journal, Fortieth Session, 246.]*

The Committee on the Judiciary to whom was referred House bill No. 1, "a bill to provide for taking the sense of the qualified voters of the State on calling a convention to alter, amend or revise the Constitution of the State," have had the same under consideration and have made one amendment thereto, which is to strike the same out from the enacting clause and inserting in lieu thereof the following, which, when concurred in, the committee recommend the passage of said bill:

That it shall be the duty of the inspectors and judges of elections, in the several townships in each county in this State at the annual election in April next, to open a poll in which shall be entered all the votes given for or against the calling of a convention to alter, revise or amend the Constitution of this State.

Sec. 2. Every qualified voter in this State may, if he chooses at the annual election in April next, vote for or against the calling



of a convention for the purpose mentioned in the first section of this act.

Sec. 3. The inspectors of elections, at the several places of voting, shall propose to each voter presenting a ballot the question, "are you in favor of a convention to amend the Constitution?" and those who are in favor of such convention shall answer in the affirmative, and those who are against such convention shall answer in the negative; which answers shall be duly recorded by the clerks of such election, and the auditors of the several counties shall furnish a poll book with proper columns for that purpose.

Sec. 4. It is hereby made the duty of the inspectors and judges of election to certify the number of votes given for or against a convention, to the clerks of the circuit courts respectively, in the same way and manner, and under the same restrictions and penalties that votes for State and county officers are given and certified.

Sec. 5. It shall be the duty of the clerks of the circuit courts throughout the State, to certify and make returns of all the votes given for or against a convention; and also, all the votes that were given at such election, to the Secretary of State, in the same way and manner that votes for Governor and Lieutenant-Governor are required by law to be certified. It shall be the duty of the Secretary of State to lay before the Governor all the returns by him received pursuant to the provisions of this act.

Sec. 6. It shall be the duty of the several sheriffs in this State to give six weeks' notice in a newspaper, if one is published in his county, if not, then by written notices in each township of his county, that there will be a poll opened for the purpose specified in this act.

Sec. 7. If a majority of the people voting at said election shall vote in the affirmative, it shall be the duty of the Governor to make proclamation of such vote, and in that case there shall be elected delegates to a convention at the time and in the manner hereinafter provided.

Sec. 8. If a majority of the people voting at said election in April next shall vote in the affirmative, and proclamation of such vote being made as specified in the seventh section of this act, the citizens of this State qualified by law to vote for members of the General Assembly, shall meet at their respective places of holding elections in the several counties of this State on the

second Tuesday in October next, and proceed to elect delegates to constitute a convention for the purpose of considering the Constitution of this State, and making such amendments to, alterations of, and changes in the same, as they may deem proper; which amendments shall afterwards be submitted to a vote of the people of this State, to be by them ratified or rejected.

Sec. 9. Said convention shall consist of fifty delegates, one to be elected from each Senatorial District, who shall be a resident thereof, at the time of his election, said delegates shall be elected in the same manner as members of the General Assembly, and the election of said delegates shall be returned and certified in the same manner as required by law for electing members of the General Assembly.

Sec. 10. Said election, when not otherwise provided for in this act, shall be conducted and the poll books kept in the manner prescribed by law for the election of members of the General Assembly, and the several provisions of the statute in relation to illegal voting and false swearing, shall govern the election under this act.

Sec. 11. In case of contested or disputed elections of delegates to said convention, the contesting candidate, or other person contesting said election, shall pursue the same course and be governed in all things by the same rules and regulations as are now provided by law in cases of disputed or contested elections of members of the General Assembly of this State.

Sec. 12. The delegates who shall be elected as aforesaid, shall assemble in convention at the capitol in the city of Indianapolis, on the second Tuesday in November, 1859, and organize by electing a president and all other officers necessary. It shall be the duty of the Secretary of State to attend the said convention on the opening thereof, to call over the lists of districts and counties, receive the credentials of the delegates, and generally to perform the like duties in the organization of the same that are usually discharged by the officer whose duty it is by law to attend to the organization of the House of Representatives of this State at the commencement of its sessions, and should the Secretary of State fail to attend in person or by deputy, at ten o'clock a. m. of said day, then it shall be the duty of the Auditor of this State to attend for such purpose, and it shall be the duty of the State Librarian to prepare the hall of the House of Representatives for the reception and sittings of said convention.

Sec. 13. The said delegates, before entering upon the discharge of their duties, shall each be duly sworn or affirmed to support the Constitution of the United States, and also faithfully and to the best of their respective abilities, to perform the duties of their offices; which oath or affirmation may be administered to them by any judge of the Supreme or judge of the circuit courts of this State, and should no such judge be in attendance at the opening of the sitting of said convention, then by any officer of the county of Marion, duly authorized by the laws of this State to administer oaths or affirmations.

Sec. 14. The members of said convention shall enjoy the same privileges in going to, attending upon and returning from said convention, that members elected to and attending on the General Assembly are entitled by law. Said convention shall be the judge of the elections, returns and qualifications of its own members; it shall possess the same power to adopt rules, expel a member for disorderly conduct, and punish contempt, that is now exercised by either house of the General Assembly in similar cases. A majority of the members shall constitute a quorum to do business, but a similar [smaller] number may adjourn from day to day and take measures to compel the attendance of absent members. And the president, members and secretaries of the convention, shall be allowed the use of the books in the state library in the same manner and upon the same conditions that the members of the General Assembly are allowed the use thereof.

Sec. 15. In case of the death or resignation of any member of said convention, the Governor of this State shall issue a writ of election, directed to the sheriff or sheriffs of the proper counties, directing a special election to be held to fill such vacancy, in the same manner now prescribed by law for supplying vacancies in the General Assembly of this State. The members of said convention shall receive three dollars per day while actually attending upon the sittings of said convention, and shall be allowed the like compensation for their travel as members of the General Assembly are allowed by law; and their secretaries, officers and attendants shall be paid the same compensation as the officers of the General Assembly of this State are paid for similar services, which pay, together with the expenses of the convention, shall be certified by the president of the convention and shall be paid by the Treasurer of this State on the warrant of the Auditor of Public Accounts.

Sec. 16. The Secretary of State and all other officers in this State shall furnish said convention with all such papers, statements, statistical information, copies of records or public documents in their possession, as the said convention may order or require, and it shall be the duty of the proper officer or officers to furnish the members with all such stationery as is usual for the General Assembly while in session, which shall be paid for on certificate of the president in like manner as the contingent expenses of the House of Representatives are now paid by law.

Sec. 17. The roll containing the draft of the amended Constitution, adopted by said convention, and the proceedings of said convention, shall be deposited by the president and secretary thereof, in the office of Secretary of State, who shall file the same and cause said Constitution to be entered of record in his office, and said convention may submit one or more of the amendments which they may propose to the Constitution as distinct propositions, to be voted upon by the people separately or together, as to them may seem expedient.

Sec. 18. It shall be the duty of the Secretary of State, so soon as the same is recorded in his office, to deliver to the Governor of this State a certified copy of said amended Constitution, who shall on the meeting of the General Assembly of this State, at its next session, lay the same before them, and it shall be the duty of the said General Assembly to pass all laws necessary and proper for submitting the same to the qualified voters for their approval or rejection, and also for organizing the government under the amended Constitution, in case the same should be adopted and ratified by such voters.

Sec. 19. It shall be the duty of the Secretary of State to cause immediately three thousand copies of this act to be printed, and forthwith forwarded by mail, not less than twenty nor more than thirty copies thereof, to the clerk of each of the counties in this State, who shall cause the sheriff of the county to deliver one or more of said copies to each inspector of elections in said county, and said clerk shall certify to the sheriff that the delegates are to be elected, and the said sheriff shall give notice of said election in the same manner now provided by law in regard to the election of members of the General Assembly of this State.

Sec. 20. It shall be the duty of the Secretary of State to propose and have printed blank forms of the caption of the poll books and the returns required of the inspectors and judges



of elections; the certificates required of the county canvassers, clerks and sheriffs, and all other forms required by this act, and which may be necessary and proper to carry the same into full effect, which shall be added by way of appendix to this act, and it shall be the duty of the clerk in each county to cause a suitable number of blank forms of poll books, with proper captions and forms of the returns required to be made by the inspector and judges of the election to be made out, conforming them to those prescribed by the Secretary of State, and deliver them to the sheriff of said county, and said sheriff shall at least twenty days previous to the election, deliver one or more copies thereof to each inspector of elections in the several townships in the county.

Sec. 21. It is hereby declared that an emergency exists for the immediate taking effect of this act, therefore this act shall take effect and be in force from and after its passage and its publication in the Indiana State Journal and Indiana State Sentinel.

A proposal for a convention consisting of thirteen delegates was rejected. An attempt to postpone the bill was lost by a vote of 47-30. At this juncture the following preamble and resolution was adopted and the bill was referred to the select committee therein provided for.

*[House Journal, Fortieth Session, 437.]*

WHEREAS, There are many provisions of the constitution of the State of Indiana that are defective, rendering legislation under it difficult, expensive, tedious, and in some respects impossible, or at least inadequate to the emergencies of the case or the wants of the citizens of the State, restricting remedies that would tend to the public good.

AND WHEREAS, In the opinion of this House it would manifestly be to the interest and welfare of the people of this State to have said defective provisions amended, and said constitution as nearly as possible perfected; therefore be it

*Resolved*, That a committee of one from each congressional district be appointed to draw up and report to this House such amendments to said constitution as may be thought advisable and necessary, to be submitted to this General Assembly, in conformity with the provisions of the sixteenth article of said Constitution.

On February 10, the committee reported this bill in the form in which it finally passed. On February 21, the bill failed of passage for want of a constitutional majority, the vote being 47-39. On February 23, the bill passed the House by a vote of 56-34. On February 26, the bill was reported to the Senate and passed without amendment on March 4 by a vote of 30-17.



[*Laws, Fortieth Session, 97.*]

AN ACT to provide for taking the sense of the qualified voters of this State, on calling a Convention to alter, amend or revise the Constitution of this State.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the inspectors and judges of elections in the several townships in each county of this State, at the annual election in October next, to open a poll, in which shall be entered all the votes given for or against the calling of a convention to alter, revise or amend the Constitution of this State.

Sec. 2. Every qualified voter in this State may, if he chooses, at the annual election in October next, vote for or against the calling of a convention for the purpose mentioned in the first section of this act.

Sec. 3. The inspectors of elections at the several places of voting, shall propose to each voter presenting a ballot, the question, "are you in favor of a convention to amend the Constitution?" and those who are in favor of such a convention shall answer in the affirmative, and those who are against such convention shall answer in the negative, which answer shall be recorded by the clerks of such election, and the auditors of the several counties shall furnish a poll book, with proper columns for that purpose.

Sec. 4. It is hereby made the duty of inspectors and judges of election, to certify the number of votes given for or against a convention, to the clerks of the circuit courts respectively in the same way and manner, and under the same restrictions and penalties that votes for State and county officers are given and certified.

Sec. 5. It shall be the duty of the clerks of the circuit courts throughout the State, to certify and make returns of all the votes given for or against a convention, and also all the votes that were given at such an election, to the Secretary of State, in the same way and manner that votes for Governor and Lieutenant Governor are required by law to be certified. It shall be the duty of the Secretary of State to lay before the Governor all the returns by him received, pursuant to the provisions of this act.

Sec. 6. It shall be the duty of the several sheriffs in this State, to give six weeks' notice in a newspaper, if one is published in his county, if not, then by written notices in each township of

his county, that there will be a poll opened for the purpose specified in this act.

Sec. 7. If a majority of the people voting at said election shall vote in the affirmative, it shall be the duty of the Governor to make proclamation of such vote, and in that case there shall be elected delegates to a convention, at the time and in the manner hereinafter provided.

Sec. 8. If a majority of the people voting at said election in October next, shall vote in the affirmative, and proclamation of such vote being made as specified in the seventh section of this act, the citizens of this State, qualified by law to vote for members of the General Assembly, shall meet at their respective places of holding elections in the several counties of this State, on the first Monday of April, A.D. 1860, and proceed to elect delegates to constitute a convention, for the purpose of considering the Constitution of this State and making such amendments to, alterations of, and changes in the same, as they may deem proper; which amendments shall afterwards be submitted to a vote of the people of this State, to be by them ratified or rejected.

Sec. 9. Said convention shall consist of one hundred delegates, who shall be, and are hereby apportioned among the several counties of said State, as the members of the House of Representatives of the present General Assembly are apportioned. Said delegates shall be elected in the same manner as the General Assembly, and the election of said delegates shall be returned and certified in the same manner as required by law for electing members of the General Assembly.

Sec. 10. Said election, when not otherwise provided for in this act, shall be conducted and the poll books kept in the manner prescribed by law for the election of the members of the General Assembly, and the several provisions of the statute in relation to illegal voting and false swearing, shall govern the election under this act.

Sec. 11. In case of contested or disputed elections of delegates to said convention, the contesting candidate, or other person contesting said election, shall pursue the same course, and be governed in all things by the same rules and regulations, as are now provided by law in cases of disputed or contested elections of members of the General Assembly of this State.

Sec. 12. The delegates who shall be elected as aforesaid, shall assemble in convention at the capitol, in the city of

Indianapolis, on the second Tuesday of May, A. D. 1860, and organize by electing a president, and all other officers necessary. It shall be the duty of the Secretary of State to attend the said convention on the opening thereof, to call over the lists of districts and counties, receive the credentials of the delegates, and generally to perform the like duties in the organization of the same, that are usually discharged by the officer whose duty it is by law to attend to the organization of the House of Representatives of this State, at the commencement of its session; and should the Secretary of State fail to attend in person or by deputy, at 10 o'clock A. M., of the same day, then it shall be the duty of the Auditor of this State to attend for such purpose; and it shall be the duty of the State Librarian to prepare the hall of the House of Representatives for the reception and sittings of said convention.

Sec. 13. The said delegates, before entering upon the discharge of their duties, shall each be duly sworn or affirmed to support the Constitution of the United States, and also faithfully, and to the best of their respective abilities, to perform the duties of their office; which oath, or affirmation, may be administered to them by any judge of the Supreme or judge of the circuit courts of this State; and should no such judge be in attendance at the opening of the sitting of said convention, then by any officer of the county of Marion, duly authorized by the laws of this State to administer oaths or affirmations.

Sec. 14. The members of said convention shall enjoy the same privileges, in going to, attending upon, and returning from said convention, that members elected to, and attending on the General Assembly are entitled to by law. Said convention shall be the judge of the elections, returns and qualifications of its own members; it shall possess the same power to adopt rules, expel a member for disorderly conduct, and punish contempt, that is now exercised by either house of the General Assembly in a similar case. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and take measures to compel the attendance of absent members. And the president, members and secretaries of the convention, shall be allowed the use of the books of the State library in the same manner and upon the same conditions that the members of the General Assembly are allowed the use thereof.

Sec. 15. In case of the death or resignation of any member of said convention, the Governor of this State shall issue a writ of election, directed to the sheriff or sheriffs of the proper counties, directing a special election to be held to fill such a vacancy, in the same manner now prescribed by law for supplying vacancies in the General Assembly of this State. The members of said convention shall receive three dollars per day while actually attending upon the sittings of said convention, and shall be allowed the like compensation for their travel as members of the General Assembly are allowed by law; and their secretaries, officers and attendants shall be paid the same compensation as the officers of the General Assembly of the State are paid for similar services; which pay, together with the other expenses of the convention, shall be certified by the president of the convention, and shall be paid by the Treasurer of this State, on the warrant of the Auditor of Public Accounts.

Sec. 16. The Secretary of State, and all other officers in this State, shall furnish said convention with all such papers, statements, statistical information, copies of records or public documents in their possession, as the said convention may order or require; and it shall be the duty of the proper officer or officers, to furnish the members with all such stationery as is used for the General Assembly while in session, which shall be paid for on the certificate of the president, in like manner as the contingent expenses of the House of Representatives are now paid by law.

Sec. 17. The roll containing the draft of the amended Constitution adopted by said convention, and the proceedings of said convention shall be deposited by the president and secretary thereof, in the office of the Secretary of State, who shall file the same, and cause said Constitution to be entered on record in his office; and said convention may submit one or more of the amendments which they may propose to the Constitution, as distinct propositions, to be voted upon by the people separately or together, as to them may seem expedient.

Sec. 18. It shall be the duty of the Secretary of State so soon as the same is recorded in his office, to deliver to the Governor of this State a certified copy of said amended Constitution, who shall, on the meeting of the General Assembly of this State at its next session, lay the same before them; and it shall be the duty of the said General Assembly to pass all laws necessary and proper for submitting the same to the qualified voters for their approval



or rejection; and also for organizing the government under the amended Constitution, in case the same should be adopted and ratified by such voters.

Sec. 19. It shall be the duty of the Secretary of State to cause immediately, three thousand copies of this act to be printed, and forthwith forwarded by mail, not less than twenty, nor more than thirty copies thereof, to the clerk of each of the counties in this State, who shall cause the sheriff of the county to deliver one or more of said copies to each inspector of elections in said county, and said clerk shall certify to the sheriff that the delegates are to be elected, and the said sheriff shall give notice of such election in the same manner now provided by law in regard to the election of members of the General Assembly of this State.

Sec. 20. It shall be the duty of the Secretary of State to prepare and have printed, blank forms of the caption of the poll books, and the returns required of the inspector and judges of elections; the certificates required by the county canvassers, clerks and sheriffs, and all the forms required by this act, and which may be necessary and proper to carry the same into full effect, and which shall be added by way of appendix to this act; and it shall be the duty of the clerk in each county to cause a suitable number of blank forms of poll books, with proper captions and forms of the returns required to be made by the inspectors and judges of the election, to be made out, conforming them to those prescribed by the Secretary of State, and deliver them to the sheriff of said county, and said sheriff shall, at least twenty days previous to the election; deliver one or more copies thereof to each inspector of elections in the several townships in the county.

Sec. 21. It is hereby declared that an emergency exists for the immediate taking effect of this act; therefore, this act shall take effect and be in force from and after its passage and publication in the Indiana State Journal and Indiana State Sentinel.

Approved, March 5, 1859.

#### **182. Qualifications for Suffrage (January 10, 1859).**

Introduced in the House on January 10, 1859, by Mr. William H. Gregory, a Republican; on January 12, referred to a select committee of five. On January 21, the committee made a favorable report.

*[House Journal, Fortieth Session, 176.]*

Mr. M. Kempf, from the select committee to which was



referred House bill No. 13, "a bill to amend the second section of article second of the constitution of the State of Indiana, so as to confine the qualification of an elector to every white male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during six months immediately preceding such election, and to vote in the township or precinct wherein he may reside"; and also to whom was referred House bill No. 44, "a bill to amend section second of article second of the constitution of the State of Indiana"; have had the same under consideration and after due deliberation, instruct me to report that said bills coincide both as to language and object, and that the committee favor House bill No. 13, as it has priority in being first introduced.

We deem the amendment which House bill No. 13 proposes, reasonable and just. That portion of section second of article second of the constitution of our State, referred to in the bill, as it now stands, is derogatory to the naturalization laws as adopted by Congress, and we think it unwise and unsafe policy to have local laws conflicting with national laws.

With these views the committee have directed me to report the bill back and recommend its passage.

By a vote of 51-42, the bill and the report were laid on the table and not subsequently considered (see Document No. 175).

*[House Journal, Fortieth Session, 42.]*

House bill No. 13. A bill to amend the second section of article second of the Constitution of the State of Indiana, so as to confine the qualifications of an elector to every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election, and to vote in the township or precinct wherein he may reside.

### **183. Residential Qualifications for Suffrage (January 11, 1859).**

Introduced by Mr. M. Kempf, a Democrat, on January 11; on January 17, referred to the same committee with Mr. Gregory's bill (see Document No. 182) with which it was identical. On January 21, it was laid on the table.

*[House Journal, Fortieth Session, 59.]*

House bill No. 44. A bill to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

**184. Holding More than One County Office (January 24, 1859).**

This resolution was presented by Mr. Miles Waterman, a Democrat, on January 24. On February 4, it was laid on the table.

[*Brevier Report, 1859, Vol. II, 73.*]

WHEREAS, Section 2 of Article 6 of the Constitution of the State of Indiana requires the election of various county officers; AND WHEREAS, in the opinion of this legislature no more officers should be maintained than the public welfare actually demands, therefore

*Be it resolved and proposed by the General Assembly of the State of Indiana, That the Constitution of the State be amended by striking out said second section of Article 6.*

*And be it further resolved, That the last proviso of Section 9 of Article 2 of said Constitution be amended so as to read: "The offices of clerk, recorder or auditor or any two of them may be conferred on the same person."*

**185. Number of Members of the General Assembly (January 24, 1859).**

Introduced on January 24, 1859, and adopted.

[*House Journal, Fortieth Session, 213.*]

WHEREAS, It is the duty of the General Assembly of Indiana to do all in its power consistent with sound policy and right to lighten the burthen of taxation;

AND WHEREAS, The General Assembly as now composed by law, consists of 150 members;

AND WHEREAS, A less number would do the business with more dispatch equally as well and perhaps better; therefore

*Resolved, That the number of representatives should be reduced to seventy-five, and the number of senators to thirty.*

**186. Wabash and Erie Canal (February 9, 1859).**

[*Senate Journal, Fortieth Session, 438.*]

WHEREAS, The general government did donate to the State of Indiana a large tract of land to aid said State in the prosecution of the Wabash and Erie Canal; AND WHEREAS, The State of Indiana owing to her financial embarrassments, did convey to her bondholders said canal and the lands which had been donated

by the Federal government, yet unsold, as a consideration in full of one-half of her State debt; AND WHEREAS, The trustees of said canal have announced their intention to abandon said canal; AND WHEREAS, it is uncertain to what extent the State of Indiana is involved, or may become involved or liable on account of said abandonment, either to individuals or to the State of Ohio in case of said abandonment; therefore,

*Resolved*, That a committee of five be appointed whose duty it shall be to investigate the whole affair as connected with the transfer of said canal, and report the extent, if any, to which the State is liable, either to individuals, as lessees of water power, or to the State of Ohio, and that they report to the Senate at as early a date as practicable.

*And be it further resolved*, That for the purpose of aiding said committee in a full and free investigation of all the facts in the case, that they have free access to all the public records of the State touching this matter.

Adopted February 9, 1859.

**187. Wabash and Erie Canal (February 18, 1859).**

[*Senate Journal, Fortieth Session, 608.*]

*Resolved*, That as our bondholders (to whom was transferred all the right and title vested in the State of Indiana in the Wabash and Erie Canal, by deed of trust for at least the term of twenty years, to secure the full payment of one moiety of the outstanding debt of the State, as shown by two several acts of the legislature, namely of June, 1846, and January, 1847), have not given any intimation to this legislature of their intention to abandon said canal, nor in any way to commit a violation of said contract, it would be both dangerous and improper for the legislature, at this time, to pass a law to relinquish any right that the State may hold in the said canal, or in any other way to interfere by legislative enactment.

Adopted February 18, 1859.

**188. Common Schools (February 10, 1859).**

Introduced by Mr. Aaron B. Line, a Democrat, on February 10; on February 12, it was referred to the Judiciary Committee, but apparently there was no further consideration.

[*Senate Journal, Fortieth Session, 464.*]

Senate bill No. 196. A bill to amend Section 1 of Article 8 of the Constitution of the State of Indiana.

**189. Length of Legislative Sessions (March 2, 1859).**

Adopted by the Senate on March 2, and referred to the Committee on Judiciary.

[*Senate Journal, Fortieth Session, 881.*]

*Be it resolved by the Senate and House of Representatives, That in estimating the term allotted by the Constitution for a session of the General Assembly it is the opinion of this legislature that Sundays should not be included and that the present session of the General Assembly should be in accordance therewith.*

**190. Length of Legislative Sessions (March 1, 1859).**

On March 1, the Judiciary Committee of the House reported a resolution in favor of sixty-one consecutive days as a legislative session.

[*House Journal, Fortieth Session, 908.*]

The Judiciary Committee, in answer to a resolution of the House inquiring the opinion of the committee as to the last day of this session on which bills can be presented to the Governor have had the subject under consideration, and instructed me to report back that a majority of the committee are of the opinion that Friday next will be the last day; the minority being of the opinion that Thursday will be the last day. All of which is respectfully submitted. Therefore,

*Resolved, That it is the opinion of this House that Friday next is the last day of this session, on which bills, passed by the General Assembly, can be constitutionally presented to the Governor for his signature.*

**191. Resolutions adopted by Political Parties Relative to a Constitutional Convention (1859).**

The Republican county conventions refrained from either endorsing or disapproving of the proposition of calling a constitutional convention. The Democratic county conventions, generally, disapproved of the idea and adopted formal resolutions of condemnation. Following is a list of these resolutions which were adopted at county conventions held between April 9 and September 26, 1859.

- (a) FRANKLIN TOWNSHIP, MARION COUNTY (PRIOR TO APRIL 11, 1859).

[*Sentinel, April 11, 1859.*]

*Resolved, That we are opposed to the calling of a convention*

to amend or alter our State Constitution, believing that such frequent tampering with the fundamental law of our State has an injurious effect upon our prosperity, and especially when the evident object is to make it subservient to partisan interests.

(b) SHELBY COUNTY (APRIL 9, 1859).

[*Sentinel*, April 12 and 15, 1859.]

A resolution was adopted opposing a call of a constitutional convention.

(c) DEARBORN COUNTY (JUNE 18, 1859).

[*Sentinel*, June 27, 1859.]

*Resolved*, That the movement on foot to amend the Constitution of Indiana, with a view to an increase of the already enormous powers of the banks of the State; the removal of restrictions on the legislative power; and a curtailment of the right of suffrage, meets our unqualified condemnation. We are satisfied with the instrument as it is; and if it ought to be amended, let it be done by the economical mode provided for by the constitution itself.

(d) HARRISON COUNTY (JULY 16, 1859).

[*Sentinel*, July 22, 1859.]

*Resolved*, That to avoid excessive taxation and promote public morality, we hold it to be the duty of the government—national, state, county and township—to use the most rigid economy in the administration of these several departments; and, therefore, for these amongst other good reasons, we are opposed to the Republican scheme of calling another convention, at a cost of not less than one hundred thousand dollars, to amend the Constitution of Indiana.

(e) FRANKLIN COUNTY (JULY 23, 1859).

[*Sentinel*, August 1, 1859.]

The Franklin county convention adopted the foregoing Harrison county resolution verbatim, and in addition the following:



That should there be a convention called to amend or change our State Constitution, the Democracy of Franklin county are distinctly opposed to any change of our organic law affecting the civil rights or franchises of our citizens, native or adopted.

(f) MORGAN COUNTY (AUGUST 17, 1859).

[*Sentinel*, August 22, 1859.]

*Resolved*, That the frequent change of the organic law of the State is likely to be injurious to the interests of the people, by unsettling the judicial constructions put upon the various contested provisions of the Constitution, and exposing to needless hazard the rights of persons and property; and that in case of needed amendments to the Constitution of this State we recognize the great superiority of the mode (on account of its cheapness, safety and convenience) pointed out and provided for amendment in the Constitution itself over the manner provided by the law of the last legislature; and that we consider the calling of a convention at any time, for amending the Constitution of this State as likely to be unnecessary, and at the present time not only uncalled for, but as incurring a heavy and useless expenditure of money, and otherwise injurious to the best interests of the State.

(g) WASHINGTON COUNTY (AUGUST 27, 1859).

[*Sentinel*, September 5, 1859.]

*Resolved*, That we are opposed to the project of calling a constitutional convention, believing the same to have originated in a desire to fasten upon the people of this State tyrannical will and despotic notions, to abridge the right of suffrage, to prepare the way by which indebtedness of the Wabash and Erie Canal can be foisted upon the State, and in the end to leave the people of the State in a much worse condition than at present.

(h) ORANGE COUNTY (AUGUST 27, 1859).

[*Sentinel*, September 6, 1859.]

*Resolved*, That a rigid economy in the administration of public affairs both State and National, is one of the cardinal principles

of the Democratic party, and that we therefore, declare our opposition to this pet scheme of the Black Republican Party of the last legislature to call a convention for the remodelling of our present State Constitution.

(i) TIPTON COUNTY (SEPTEMBER 3, 1859).

[*Sentinel*, September 10, 1859.]

*Resolved*, That we are opposed to the calling of a constitutional convention to amend, revise or make a new Constitution, as the effects thereof will be evil and only evil, and that continually; and that the present remodeling of our organic laws tend to shake and render inefficient our government and institutions.

(j) RUSH COUNTY (SEPTEMBER 3, 1859).

[*Sentinel*, September 12, 1859.]

*Resolved*, That we oppose, and will vote at the ballot-box against the mischievous and unnecessary project of calling, at this early period, and before our existing Constitution is fairly tried and understood, another State convention to make a new one.

(k) SCOTT COUNTY (SEPTEMBER 22, 1859).

[*Sentinel*, October 1, 1859.]

*Resolved*, That we regard the proposition to call a convention to amend the Constitution of this State, as uncalled for and inexpedient, and we recommend every good citizen to oppose the same at the polls.

(l) CLINTON COUNTY (SEPTEMBER 25, 1859).

[*Sentinel*, October 3, 1859.]

*Resolved*, That the act of the legislature, approved on the 5th day of March last, providing for a convention to alter, revise or amend the Constitution of this State, is not demanded for the public good, and, therefore, we recommend and advise every Democrat to vote against the calling of such convention, when the question is presented at the October election.

(m) JEFFERSON COUNTY (SEPTEMBER 26, 1851).

[*Sentinel*, October 2, 1859.]

*Resolved*, That we deem it inexpedient to call a convention at the present, to amend the State Constitution.

**192. Democratic Platform of 1860—Aliens, and Wabash and Erie Canal (January 11, 1860).**

The Democratic State Convention of 1860, assembled in Indianapolis on January 11, 1860, adopted the following resolution relative to alien voters and the transfer of the Wabash and Erie Canal.

[*Indianapolis Sentinel*, January 13, 1860.]

*Resolved*, That any distinction amongst citizens on account of their religion or place of birth, continues to be utterly reprobated by the Indiana Democracy, in common with their brethren of the other States, as neither justified by the past history or future prospects of the country, nor in unison with the spirit of toleration and enlarged freedom which peculiarly distinguishes the American system of government; and that we most earnestly denounce the unjust and disparaging imputation upon the character of our foreign born population, contained in the recent enactments incorporated in the laws of that State by the so-called Republicans of Massachusetts, whereby a class of white men whose rights are entitled to equal respect with those of all others, are deprived of privileges and immunities accorded even to the negro, and whereby a most odious example has been set, from which that party, if successful in retaining power, may feel justified in perpetrating, there and elsewhere, new aggressions and outrages on that portion of our population.

*Resolved*, That we believe in that provision of the Constitution and the laws thereunto enacted for the naturalization of foreigners, and that when they declare their intention to become citizens of our Government, we believe that they are entitled to its protection, wherever the flag of our country may wave over the land, as though they were native born citizens.

*Resolved*, That we are opposed to the transfer of the Wabash and Erie Canal to the State, or any change in the relation of the State to the canal bondholders.

**193. Republican Platform of 1860—Aliens, and Wabash and Erie Canal (February 22, 1860).**

The Republican Party, assembled in convention at Indianapolis on

February 22, 1860, adopted the following resolutions in regard to aliens and the Wabash and Erie Canal.

[*Indianapolis Journal*, February 23, 1860.]

That we are in favor of equal rights to all citizens, at home and abroad, without reference to the place of their nativity, and that we will oppose any attempt to change the present naturalization laws.

That we are opposed to the retrocession of the Wabash and Erie Canal, as well as to the State becoming liable for any of the debts, or bonds for which the same was transferred to satisfy.

#### THE FORTY-FIRST GENERAL ASSEMBLY (1861).

In the Forty-first General Assembly the Senate consisted of 28 Republicans and 22 Democrats, and the House of 62 Republicans and 38 Democrats. The overwhelming defeat of the proposition of calling a constitutional convention had now induced the proponents of constitutional amendments to abandon the idea of a convention but to insist on securing amendments by the legislative method.

#### 194. Committee on Necessity for Constitutional Amendments (January 14, 1861).

On January 14, 1861, a select constitutional committee of five senators was appointed in conformity with the provisions of the following resolution:

[*Senate Journal*, Forty-first Session, 50.]

WHEREAS, It is represented by some of the citizens of the State of Indiana, that her present Constitution does not afford sufficient margin for the full development of her resources in all the elements that are calculated to make her a great State; AND WHEREAS, The Constitution contains within itself provisions which point out the manner of amending the same; therefore,

*Resolved*, That a committee of five be appointed, whose duty it shall be to inquire into the necessity (if any) of amending the Constitution of the State, and to report by bill or otherwise.

#### 195. Annual Sessions of the General Assembly (January 14, 1861).

On January 14, Mr. Martin L. Bundy, a Republican, introduced a resolution in the House relative to annual sessions of the General Assembly, and authorizing voters to levy taxes for school purposes.

[*House Journal*, Forty-first Session, 55.]

*Resolved*, That the Judiciary Committee enquire into the

expediency of framing and submitting to this House for their adoption, amendments to the constitution providing for annual instead of biennial sessions of the legislature; and also that the citizens of any town or township, desiring so to do, may levy such additional tax for school purposes as they may deem expedient.

**196. Residential Qualifications for Suffrage (January 18, 1861).**

On January 18, Mr. Walter March, a Republican, introduced a resolution in the Senate for the adoption of a constitutional amendment to prevent fraudulent voting, which was referred to the select committee appointed on January 14. On February 2, the resolution was reported back to the Senate and adopted by a vote of 38-2. The House passed the resolution on February 27 by a vote of 88-2.

*[Laws, Forty-first Session, 185.]*

A joint resolution proposing an amendment to the second section of article second of the Constitution, so that the legislature may more effectually guard against fraudulent voting.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be proposed to the Constitution of the State, and submitted to the electors for their adoption or rejection, provided the same is agreed to by a majority of all the members elected to each house of the General Assembly, chosen at the next general election, to-wit: That there be added to the second section of article second the following clause: Laws may be passed fixing as a qualification of voting, the length of time during which an elector shall have resided in the county and township, precinct or ward in which he offers to vote, and for ascertaining by proper proofs the persons entitled to vote under this Constitution.

**197. Residence Qualifications of Electors (January 23, 1861).**

On January 23, the following resolution relative to the residence qualifications of voters was introduced in the House.

*[House Journal, Forty-first Session, 154.]*

*Resolved,* That the Committee on Rights and Privileges be instructed to inquire into the expediency of requiring a residence of sixty days in the county, and not less than thirty in the township or precinct in which any voter of this State may offer to vote, and report to the House by bill or otherwise, at as early a day as practicable.



**198. House Committee Report on Registration Law (January 23, 1861).**

On January 23, Mr. James H. Turner, a Republican, introduced a bill in the House to provide for the registration of voters. On February 5 it was referred to the Committee on Elections, who on February 12 reported that they were of the opinion "that a registry law is not only inexpedient, but doubtless unconstitutional." The bill was then referred to the Judiciary Committee, who submitted the following report on February 13, which was concurred in.

*[House Journal, Forty-first Session, 403.]*

The Judiciary Committee, to whom was referred House bill No. 90, being "a bill to provide for the registering of voters, to prevent corruption at elections, and to define what is the residence of a voter," have had the same under consideration, and have instructed me to report that so much of the bill as requires a voter to reside and have his domicil in the township thirty days previous to offering his ballot, conflicts with Section 2 of Article 2 of the Constitution of the State of Indiana. The qualifications in the Constitution for a voter, are merely that the person offering to vote shall be "a white male citizen," over the age of twenty-one years, and that he be a resident of the State for six months immediately preceding the election, and that he shall vote in "the township or precinct where he may reside."

The term "residence" was well understood, and had a definite meaning at the time of the adoption of the Constitution. It requires no length of time, but fixedness of habitation, to constitute a residence; and to say that a voter shall reside in the township thirty days before offering his vote, is super-adding a qualification not required by the Constitution, and the legislature might as well say the voter should be twenty-five years of age, when the Constitution declares he need only be twenty-one years old.

The committee are desirous of protecting the ballot-box from fraud, by every legal and constitutional means, and to that end would make the most stringent laws punishing persons who voted, or offered to vote at elections, without the qualifications of age and residence required by the Constitution; but without saying that a registry law, such as is provided for in the bill, would be unconstitutional, they are of the opinion the law at this time would be inexpedient and unnecessary. The population of our State is not sufficiently dense, nor have we cities sufficiently large, to require the enactment of such law. Before the time arrives,

however, when such a law should be required, it is to be hoped that the Constitution will be so changed that all objection to its constitutionality shall be removed. The committee recommend the indefinite postponement of the bill.

[*House Journal, Forty-first Session, 161.*]

House bill No. 90. A bill to provide for the registering of voters, to prevent corruption at elections and to define what is the residence of voters.

**199. Registration Bill (January 28, 1861).**

Meantime, on January 28, another bill with the same purpose was introduced in the House.

[*House Journal, Forty-first Session, 227.*]

House bill No. 125. A bill to provide for the prevention and punishment of frauds in elections.

On February 5, when the bill came up for consideration, the following substitute was proposed, and the bill and amendment were referred to the Committee on Elections.

[*House Journal, Forty-first Session, 320.*]

No. 125. A bill for the prevention and punishment of frauds in elections.

Section 1. *Be it enacted by the General Assembly of the State of Indiana:* That any person under the age of twenty-one years, or who has not been a citizen of the State of Indiana during the six months immediately preceding, or being of foreign birth, who shall not have resided in the United States one year, and six months immediately preceding, within the State of Indiana, and declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, or who shall not, in good faith, reside in the township, precinct or ward, in which the election may be held, who shall, at any general or special election, for State, county or municipal officers, offer to vote, shall be deemed guilty of a felony, and on conviction thereof shall be fined in any sum not more than fifty dollars, to which may be added imprisonment in the penitentiary not less than six months nor more than two years.

Sec. 2. That any person who shall attempt to induce any person not legally qualified, to vote contrary to the provisions of the laws and Constitution of Indiana, or who shall try to induce any person to move temporarily from one township, precinct or

ward to another for the purpose of voting therein, or who shall harbor or employ such a transient person, knowing him to be such, shall be guilty of a felony, and shall, upon conviction thereof, be fined in any sum not more than fifty dollars, to which may be added imprisonment in the penitentiary not less than six months nor more than two years.

Sec. 3. The word "reside," in the first section of this act shall be construed to apply, in the case of a married man, to the place of residence of his family, and in a single man, to the township, precinct or ward in which he regularly sleeps.

On February 12, this bill and the bill introduced by Mr. Turner were reported back to the House with the recommendation that they be indefinitely postponed. This bill apparently was considered no further.

**200. Residential Qualifications of Electors—Resolution of Inquiry (January 24, 1861).**

On January 24, the following resolution was introduced in the House.

*[House Journal, Forty-first Session, 173.]*

*Resolved*, That the Committee on Judiciary inform this House whether or not a law requiring a specified period of residence in a township to entitle any person to vote in such township or precinct, would be constitutional.

**201. Supreme Court Opinion on Constitutionality of Election Bills (January 25, 1861).**

On January 25, the following resolution, seeking to obtain an opinion of the Supreme Court, was offered in the Senate, but laid on the table.

*[Senate Journal, Forty-first Session, 160.]*

*Resolved*, That the judges of the Supreme Court are respectfully requested to examine any bills designed to prevent frauds in elections which may be submitted to them by the Senate, or by the committees having such bills in charge, and to give their opinions in writing upon the constitutionality thereof; and especially as to the following points:

First. Can the General Assembly, under the present Constitution, pass a law prescribing a residence for any given number of days in the precinct where the person offering to vote claims to reside; or have the General Assembly the power to define by law how long a person claiming to be a voter must be an inhabitant of the precinct before he shall be deemed a resident.

Second. Can the General Assembly constitutionally pass a registry law for the purpose of defining and ascertaining who are entitled to the right of suffrage, and to prevent unqualified persons from voting.

**202. Local Levy of Common School Taxes (January 18, 1861).**

Introduced in the Senate on January 18 by Mr. Walter March and referred to the select committee who reported favorably on February 2, when the resolution passed by a vote of 31-4. The resolution passed the House by a vote of 77-13.

*[Laws, Forty-first Session, 186.]*

A joint resolution proposing an amendment to article eight of the Constitution, so as to enable cities, townships and towns, to levy taxes for the support of common schools.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be proposed to the Constitution of the State, and submitted to the electors for their adoption or rejection: *Provided,* The same is agreed to by a majority of all the members elected to each house of the General Assembly chosen at the next general election, viz.:

That there be added to article eight of the Constitution, the following section:

Incorporated cities, townships and towns, shall have power by taxation, under regulations prescribed by the General Assembly, to raise revenue for the support of Common Schools, in addition to the revenue derived for that purpose from the State.

**203. Local Levy of Common School Taxes (February 2, 1861).**

When the select committee reported the foregoing resolution, they recommended the adoption of a supplementary amendment to render the school law of 1852 constitutional in conformity with the interpretation placed upon the uniform common school section by the Supreme Court. The resolution passed the Senate by a vote of 35-4, and the House on February 15, by a vote of 70-16.

*[Laws, Forty-first Session, 186.]*

A joint resolution proposing an amendment to the twenty-third section, article 4, of the Constitution, so as to provide for laws enabling cities, townships and towns to raise money for the support of common schools.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be proposed to the Constitution

of the State, and submitted to the electors for their adoption or rejection: *Provided*, The same is agreed to by a majority of all the members elected to each house of the General Assembly chosen at the next general election, viz.:

That there be added to the twenty-third section of article four of the Constitution, the following clause:

But laws may be passed by the General Assembly enabling incorporated cities, townships and towns, to raise money for the support of common schools, without requiring a uniform rate of taxation between the different corporations.

#### 204. Common School Fund (January 21, 1861).

On January 21, 1861, the following resolution, relative to the distribution and disposition of the common school fund, was introduced in the House.

[*House Journal, Forty-first Session, 136.*]

*Resolved*, That the Judiciary Committee be instructed to report amendments to the eighth article of the Constitution, provided it is not deemed incompatible with the public good, as follows, to-wit:

*First.* To the effect that the funds in the second section thereof mentioned shall be and remain a consolidated and perpetual fund for the support of common schools in this State, which may be increased but never diminished and which shall have a uniform and general application throughout the State, so that each county will draw its quota of interest arising therefrom in proportion to the number of children therein.

*Second.* That that portion of the common school fund which may arise in each county from direct taxation, and from fines and forfeitures under the penal code, shall remain in said county for the entire and exclusive benefit of the common schools therein.

#### 205. Distribution of Common School Fund (February 16, 1861).

On February 16, the following resolution was offered in the House.

[*House Journal, Forty-first Session, 487.*]

*Resolved*, That the Judiciary Committee be and they are hereby instructed to examine section one of article eight of the Constitution, and report at their earliest convenience, who are entitled to the benefit of our common schools by the provisions of said section.



**206. Quadrennial Election of State Superintendent of Public Instruction (February 19, 1861).**

Introduced on February 19, in the Senate, by Mr. John F. Miller, a Republican, and rejected at once by a vote of 20-24.

*[Senate Journal, Forty-first Session, 520.]*

Senate joint resolution No. 15. A joint resolution proposing an amendment to the eighth section of article eight of the Constitution, so as to make the superintendent of public instruction elective every four years.

**207. Reduction of Membership of General Assembly (February 11, 1861).**

On February 11, the following resolution relative to a reduction in the membership of the House and Senate was presented in the House.

*[House Journal, Forty-first Session, 380.]*

*Resolved*, That the Committee on Apportionment be instructed to inquire into the expediency of reducing the number of Senators to fifteen, and the number of Representatives to thirty, in the General Assembly, and that they report by bill or otherwise, at their earliest convenience.

**208. Reduction of Membership of General Assembly (February 25, 1861).**

On February 25, a similar resolution was offered in the Senate.

*[Senate Journal, Forty-first Session, 607.]*

*Resolved*, That the joint Committee on Apportionment be instructed to inquire into the expediency of reducing the number of Senators to thirty, and the number of Representatives to sixty, and if such reduction be expedient, to report a bill apportioning the State accordingly.

**209. Fixing Number of Senators at 36 and Representatives at 72 (February 23, 1861).**

On February 23, Mr. Martin L. Bundy, a Republican, offered an "amendment of Article 4 Section 2 of the Constitution of the State of Indiana, reducing the number of Senators to 36, and the number of Representatives to 72." An unsuccessful attempt was made to amend the resolution to the effect "that the Constitution as made by the fathers of 1850 is good enough as it is, and we are opposed to any amendments thereof." The resolution was referred to the Judiciary Committee and on March 11, for want of time to consider it, it was reported back and laid on the table.

[*House Journal, Forty-first Session, 578.*]

Joint resolution No. 33. A joint resolution proposing amendments to the Constitution of the State of Indiana.

**210. House Judiciary Committee Report on Annual Legislative Sessions (March 4, 1861).**

On March 4, the House Judiciary Committee made the following report, but apparently there was no further action on the resolution.

[*House Journal, Forty-first Session, 771.*]

The Judiciary Committee, to whom was referred a resolution of this House, No. —, inquiring into the expediency of so amending the Constitution of the State, as to provide annual, instead of biennial, sessions of the General Assembly, have had the same under consideration, and have instructed me to submit the accompanying joint resolution, and recommend its passage. Your committee are impressed with the belief that the constitutional limit of sixty-one days for the duration of the sessions of the General Assembly, is too short to enable that body properly to mature the legislation necessary for a million and a half of people. In other States, whose senators and representatives are elected biennially, annual sessions are procured by adjournment, but here the constitutional limit intervenes. The legislative expenses seem to have been the principal motive which induced the framers of the Constitution to limit the duration of the sessions, but the committee submit that the people have lost far more for the want of such sessions to watch unfaithful public servants. The legislature is the only check in the public officers which the people have, and if they are to be kept within the line of their duty, experience has proved that the General Assembly should meet oftener than once in two years. The following joint resolution is submitted:

House joint resolution No. 36. A joint resolution, proposing to amend the Constitution, by substituting annual, for biennial sessions of the General Assembly.

**211. Duration of Legislative Sessions (March 8, 1861).**

Reported by the House Judiciary Committee on March 8, as follows:

[*House Journal, Forty-first Session, 961.*]

The Judiciary Committee to whom was referred a resolution

of the House directing said committee to report at what time the present session will expire by constitutional limitation, have had the same under consideration, and direct me to report that in the opinion of said committee, this House may lawfully continue its session till Monday, the 11th day of March, 1861, at twelve o'clock at night, and that the House may pass bills, and present them to the Governor for approval, till Saturday the 9th day of March, 1861, at twelve o'clock at night.

### THE FORTY-THIRD GENERAL ASSEMBLY (1863).

The sources of information as to the political complexion of the Forty-third session of the General Assembly differ. The Indianapolis Journal gives the following: House, 57 Democrats and 43 Unionists; Senate, 26 Democrats and 24 Unionists. The Indianapolis Sentinel gives 60 Democrats and 40 Abolitionists in the House, and 27 Democrats, 21 Abolitionists and 2 Independents in the Senate. There were three constitutional measures which the Forty-third session was supposed to act upon: Those prescribing the residential qualifications of electors and authorizing the levy of local common school taxes. These provisions were embodied in three separate resolutions.

#### 212. Levy of Local Common School Tax (January 14, 1863).

Introduced in the Senate on January 14, 1863, by Mr. Walter March, a Republican; referred to the Committee on Education on January 15; on January 21, reported favorably and passed under suspension of the rules, by a vote of 36-7. On January 28, the resolution was referred to the House Committee on Education; on February 21, a divided report was presented; the minority report was to the effect that "the adoption of the proposed amendments would eventually destroy our common school system; that any change at the present time in our school system would be unwise and injudicious . . ." The majority report was in favor of passage but apparently no further action was had. The resolutions comprised in this measure are Documents Nos. 202 and 203 above. This was the first time a constitutional amendment adopted by one General Assembly, had been submitted for ratification to its successor.

[*Senate Journal, Forty-third Session, 65.*]

Senate bill No. 1, entitled "A joint resolution proposing amendments to Article 8, and twenty-third section of Article 4 of the Constitution, enabling cities, townships and towns to levy taxes for the support of common schools, and so to provide for laws necessary to secure that object."

In the House, these propositions were embodied in two separate resolutions and were introduced by Mr. Thomas J. Cason, a Republican, on January 21; on January 27, both resolutions were referred to the Committee on Corporations; on January 28, Resolution No. 14 was referred to the Committee on Education; on February 21, the Committee on Education recommended the indefinite postponement of this resolution "for the reason that a Senate

joint resolution, proposing the same amendment, is now pending in this House." On February 12, the Committee on Corporations reported favorably on Resolution No. 13, but there was apparently no further action.

[*House Journal, Forty-third Session, 135.*]

Joint resolution No. 13. A joint resolution proposing an amendment to Article 8 of the Constitution, so as to enable cities, townships and towns to levy taxes for the support of common schools.

Joint resolution No. 14. A joint resolution proposing an amendment to the twenty-third section, Article 4 of the Constitution, so as to provide for laws enabling cities, townships and towns to raise money for the support of common schools.

### 213. Residential Qualifications of Voters (January 14, 1863).

Introduced by Mr. Walter March on January 14; January 15, referred to the Committee on Education; reported favorably on January 23 and passed by a vote of 35-2 under suspension of the rules. On January 28, after second reading in the House, referred to the Committee on Elections; apparently there was no further action. The resolution comprised in this measure is Document No. 196 *supra*, and with its defeat all pending propositions were disposed of.

[*Senate Journal, Forty-third Session, 70.*]

Senate joint resolution No. 2, entitled "A joint resolution proposing an amendment to the second section of article second of the Constitution, so that the legislature may more effectually guard against fraudulent voting."

On January 21, Mr. Thomas J. Cason, a Republican, presented a resolution in the House apparently embodying this same proposition; on January 27, it was referred to the Committee on Elections; on January 29, the day after Mr. March's Senate resolution had been referred to them, the committee brought in a divided report; by a vote of 25-61, the House refused to indefinitely postpone the resolution, and it was then referred to the Judiciary Committee. Apparently there was no further action. This resolution is identical with Document No. 196 *supra*.

[*House Journal, Forty-third Session, 134.*]

Joint resolution No. 12. A joint resolution proposing an amendment to the second section of article second of the Constitution, so that the legislature may more effectually guard against fraudulent voting.

### 214. Submission of Amendments (March 5, 1863).

On March 5, Mr. Walter March, a Republican, introduced a bill in the Senate which was designed, apparently, to provide for the submission of the propositions contained in the resolutions considered at this session, to the people; under suspension of the rules, the bill was advanced to second reading and referred to a select committee of three, from which, apparently, it never emerged.

[*Senate Journal, Forty-third Session, 662.*]

Senate bill No. 182, a bill to provide for the submission to the vote of the electors of the State, certain amendments to the Constitution.

**215. Extending Right of Suffrage to Soldiers (January 8, 1863).**

In 1863, there were a large number of soldiers in the field who by the provisions of the Constitution were deprived of the right of suffrage. On January 8, the first day of the session, the following resolution was introduced in the House.

[*House Journal, Forty-third Session, 14.*]

WHEREAS, The election law of Indiana requires that every voter shall cast his ballot in the township or precinct in which he may reside, and consequently those brave men who are in the field, battling for the supremacy of the law and the integrity of the Union, are thereby disfranchised, therefore,

*Be it resolved*, That the Judiciary Committee be directed to inquire into the expediency of reporting a bill so amending said law as to confer upon the Indiana Volunteers, now in the service of the United States, the privilege and right of voting for State and county officers at all elections held therefor, and that they report at the earliest practicable moment.

**216. Extending Right of Suffrage to Soldiers (January 12, 1863).**

On January 12, a similar resolution of inquiry was introduced in the Senate.

[*Senate Journal, Forty-third Session, 25.*]

*Resolved*, That the Judiciary Committee be instructed to inquire into the constitutionality of a law providing for the voting of Indiana soldiers, who may be absent from their respective townships, and on duty outside of the State at the time of election.

**217. Extending Right of Suffrage to Soldiers (January 16, 1863).**

As late as March 7, a petition, signed by the citizens of Noble county, was presented in the House asking for the enactment of a law whereby the "volunteers in the State of Indiana be allowed the exercise of the franchise." On January 16, Mr. Thomas J. Cason, a Republican, introduced a resolution in the House providing for an amendment to the Constitution permitting soldiers to vote. On January 27, referred to the Committee on Elections; on January 29, the committee presented a divided report. and the resolution was referred to the Judiciary Committee; on February 4, the committee



reported the resolution back to the House recommending that it be laid on the table for the reason "that such an amendment would be inexpedient. They further submit that it would be unconstitutional to propose an amendment to the Constitution while there is a proposed amendment to the same pending and undisposed of . . ." By a vote of 42-33, the recommendation of the committee was concurred in.

[*House Journal, Forty-third Session, 102.*]

Joint resolution No. 9. In reference to amending the Constitution, so as to allow soldiers of this State to vote at the annual State and county elections.

#### 218. Authorizing Soldiers to Vote (March 7, 1863).

On March 7, Mr. John C. New introduced a bill in the Senate providing for taking the soldier vote; by a vote of 37-1, the rules were suspended and the bill read a second time and referred to the Judiciary Committee; on March 7, the bill was reported back without recommendation for want of time and was laid on the table.

[*Senate Journal, Forty-third Session, 568.*]

Senate bill No. 174. A bill to provide for taking the vote of officers and soldiers of the volunteer service in the army of the United States, from this State, at all legal elections for civil officers; also, providing for the counting of ballots, and certifying the returns of such elections.

#### THE FORTY-FOURTH GENERAL ASSEMBLY (1865).

The political composition of the Forty-fourth General Assembly of 1865 was as follows: Senate, 25 Republicans and 25 Democrats; House, 55 Republicans and 45 Democrats. The constitutional measures proposed and considered at this session included amendments enabling soldiers to vote, safeguarding the right of suffrage, providing for viva voce voting, authorizing school corporations to levy supplemental local school taxes, extending full civil and political rights to negroes and mulattoes, acknowledging Almighty God as the ultimate source of all political authority. The question of calling a constitutional convention was also considered, as were also three quasi-constitutional problems relative to the duration of a regular session of the General Assembly, the suspension of the rules and the expediency of depriving electors, who had purposely shirked military duty, of the right of suffrage. One amendment, designed to enable incorporated cities and towns to levy taxes for the support of common schools, passed both houses by safe majorities and was submitted to the consideration of the next succeeding General Assembly. Petitions were presented in the House from the citizens of Porter, Marion, Gibson, Monroe and Fulton counties and Cambridge City asking unspecified amendments to the Constitution. In order to dispose of these propositions rapidly, the House adopted a resolution on January 17, providing for the appointment of a select committee on propositions for amending the Constitution.

**219. Governor Morton Urges Adoption of Constitutional Amendment Enabling Soldiers to Vote (January 6, 1865).**

The number of soldiers enlisted in the Union Armies from Indiana prior to 1865 was 165,314. Under the provisions of the Constitution these soldiers were deprived of the right of suffrage. This was regarded as a grave political injustice, and numerous attempts were made to so amend the Constitution as to permit persons engaged in military service to vote. A constitutional amendment to remove this restriction was strenuously advocated by Governor Morton in his message to the General Assembly on January 6, 1865.

*[House Journal, Forty-fourth Session, 23.]*

Under the provisions of our Constitution, no person can vote except in the precinct in which he resides. This should be so amended, in my opinion, as to enable such of our citizens as are in the military service of the government, and who would be entitled to a vote if at home, to vote wherever they may be, in camp or field, under such reasonable regulations and safeguards as might be prescribed by the legislature.

I can conceive of no greater political injustice, than the exclusion from the right of suffrage, of those gallant men who are absent from home, because they are fighting the battles of their country. I earnestly hope that immediate steps will be taken to relieve our Constitution of this injustice, and although it may not be accomplished in time to become operative during the war, it should not on that account be neglected.

**220. Enabling Soldiers to Vote—Method of Voting—Fraudulent Voting (January 6, 1865).**

On January 6, a joint resolution was introduced in the Senate by Mr. William A. Bonham, a Democrat, providing for the adoption of a constitutional amendment authorizing the General Assembly to enact statutes to more effectually guard against fraudulent voting, and to enable electors to vote when absent from the State, serving in the armies or navy of the United States. On January 10, when the resolution was under consideration, a motion was made\*by Mr. Jason B. Brown, a Democrat, to amend the resolution so as to amend Section 13 of Article 2 of the Constitution to read as follows: "All elections by the people shall be viva voce, under such provisions by law, as the General Assembly may from time to time enact; and all elections by the General Assembly or by either branch thereof shall be viva voce." The resolution and amendment were then referred to the Judiciary Committee. On January 25, the committee reported back the resolution with a slight amendment and recommended its adoption. On January 31, the committee reported back the proposed amendment to the resolution, relative to viva voce voting, and recommended that the amendment be laid on the table, as "the change therein proposed is neither necessary or advisable." In this recommendation, the Senate concurred.

\*((in the House))

[*Senate Journal, Forty-fourth Session, 23.*]

Senate joint resolution No. 1, entitled "A joint resolution, proposing an amendment to the second section of article second of the Constitution, so that the legislature may more effectually guard against fraudulent voting, and to enable electors to vote when absent from the State, serving in the army or navy of the United States."

**221. Declaring the Constitutional Right of Soldiers to Vote (January 17, 1865).**

In the meantime, on January 17, a resolution of inquiry was adopted by the House, "That the Committee on Elections be instructed to enquire into the expediency and constitutionality of so amending the election laws of the State that soldiers absent from the State in the field, may be allowed to vote at their places of rendezvous, for all Federal, State and county officers, and to report at their earliest convenience to this House, by bill or otherwise." On February 1, the following resolution, declaring the constitutional right of the General Assembly to extend the suffrage to soldiers, was presented and laid on the table.

[*House Journal, Forty-fourth Session, 250.*]

*Resolved*, That the Constitution of the State, without amendment gives ample power for providing by law, for officers and soldiers of the State, in the military service of the United States (except those in the regular service of the United States or its allies) to vote at all elections; and it is hereby made the duty of the Committee on Elections to report a bill which shall provide for their voting at such elections, and to punish those who shall prevent, hinder or defraud them in the exercise of this right.

**222. Fraudulent and Illegal Voting (January 17, 1865).**

On the same day, January 17, the House likewise adopted the following resolution relative to fraudulent voting.

[*House Journal, Forty-fourth Session, 111.*]

*Resolved*, That the Committee on Elections be, and are hereby instructed to inquire into the propriety and expediency of so amending the general election laws of the State, for the purpose of more effectually preventing fraudulent and illegal voting, and report by bill or otherwise.

**223. Registration of Voters (January 19, 1865).**

Another method of preventing fraudulent voting was to require all

voters to register; this proposition had been advanced unsuccessfully before, and was again presented for consideration.

[*House Journal, Forty-fourth Session, 131.*]

*Resolved*, That the Committee on Elections be requested to inquire into the expediency of so amending the election laws of the State of Indiana as to require a registration of at least forty days before voting, of all the voters of each and every township, to be kept by the township trustee, and that said township trustee shall provide for such registration, and give due notice thereof by advertising in the newspaper of most general circulation in the township.

#### 224. **Supplementary Local School Levies (March 6, 1865).**

The desire to provide for the local support of common schools by the imposition of a local supplementary tax levy, led to the introduction of several constitutional measures on that subject. On January 9, 1865, Mr. Othniel Beeson, a Republican, introduced two joint resolutions in the Senate designed to amend the Constitution so as to enable cities, towns and townships to raise additional revenue for the support of common schools. On January 10, these resolutions were referred to the Judiciary Committee. On January 18, the committee made a unanimous report in favor of adoption. On January 25, both resolutions passed, joint resolution No. 2 by a vote of 43-2, and joint resolution No. 3 by a vote of 46-0. On February 2, the House referred these resolutions to the Special Committee on Constitutional Amendments. On February 21, the committee submitted a report recommending the passage of both resolutions. On March 4, joint resolution No. 2 failed of passage by a vote of 31-41; joint resolution No. 3 was laid on the table.

[*Senate Journal, Forty-fourth Session, 32.*]

Senate joint resolution No. 3, entitled "A joint resolution proposing an amendment to the twenty-third section, Article 4, of the Constitution, so as to provide for laws enabling cities, townships and towns, to raise money for the support of common schools."

There is no evidence that joint resolution No. 2 ever passed the House but it was so reported to the Senate on March 4, the day on which it failed to secure a constitutional majority, and was approved by the Governor on March 6.

[*Laws, 1865, p. 131.*]

A joint resolution proposing an amendment to Article 8 of the Constitution, so as to enable cities and towns to levy taxes for the support of common schools.

*Be it resolved by the General Assembly of the State of Indiana,*  
That the following amendment be proposed to the constitution

of the State, and be agreed to, and submitted to the electors for their adoption or rejection: *Provided*, The same is agreed to by a majority of all the members elected to each house of the General Assembly chosen at the next general election:

That there be added to Article 8 of the Constitution the following section:

Incorporated cities and towns shall have power, by taxation, under regulations prescribed by the General Assembly to raise revenue for the support of common schools, in addition to the revenue derived for that purpose from the State.

Approved, March 6, 1865.

#### **225. Supplementary Local School Levies (January 10, 1865).**

Meantime, on January 10, Mr. Bartlett Woods, a Republican, introduced similar resolutions in the House. On January 18, on motion of the author, the two resolutions were referred to the Judiciary Committee. On January 21, the committee submitted an adverse report for the reason "that further legislation on that subject at this time is inexpedient; that the object sought by such change in the Constitution can be remedied by incurring the general tax for the support of common schools under the present Constitution; that the Committee on Education are now preparing a bill on that subject, of a uniform character throughout the State by an increase of taxation, so that a few schools may be taught from six to eight months in the year in cities, towns and townships." The report was concurred in. (See Document No. 243.)

[*House Journal, Forty-fourth Session, 60 and 63.*]

Joint resolution No. 3. A joint resolution proposing an amendment to Article 8 of the Constitution, so as to enable cities, towns, townships and school districts, to levy taxes for the support of common schools.

Joint resolution No. 4. A joint resolution proposing an amendment to the twenty-third section of the Constitution so as to provide for laws enabling cities, towns, townships and school districts to raise money for the support of common schools.

#### **226. Negro Colonization and Discrimination (January 7, 1865).**

On January 7, Mr. F. M. Meredith, a Republican, introduced a resolution in the House proposing to strike out the thirteenth article of the Constitution relative to the immigration, colonization and civil disabilities of negroes and mulattoes. On January 18, the resolution was referred to the select House Committee on Constitutional Amendments. On February 21, the committee brought in a divided report. A majority of the committee recommended the passage of the resolution; a minority, consisting of Mr. James Harrison and Mr. Charles B. Lasselle, recommended that the resolution be laid on the table as they deemed it inexpedient. Both reports were laid on the table and apparently there was no further action. (See Document No. 240.)



[*House Journal, Forty-fourth Session, 44.*]

Joint resolution No. 1 proposing an amendment to the Constitution by striking out the thirteenth article thereof:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be proposed to the Constitution of the State and submitted to the electors for their adoption or rejection: *Provided,* The same is agreed to by a majority of all the members elected to each house of the General Assembly, chosen at the next general election, to-wit:

That Article 13 of the Constitution, which reads as follows:

Sec. 1. "No negro or mulatto shall come into or settle in the State after the adoption of this Constitution.

Sec. 2. All contracts made with any negro or mulatto coming into the State contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such negro or mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars or more than five hundred dollars.

Sec. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such negroes and mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Sec. 4. The General Assembly shall pass laws to carry out the provisions of this article", be stricken therefrom.

**227. Memorial Demanding Removal of Negro Disabilities (January 16, 1865).**

Meantime, resolutions, petitions and memorials, adopted by various churches, societies and organizations, concerning the disabilities of negroes, were presented in both the House and Senate.

On January 16, Mr. Paris C. Dunning introduced the following resolution in the Senate.

[*Senate Journal, Forty-fourth Session, 92.*]

*Resolved,* That the accompanying memorial of Western Yearly Meeting of Friends of Southern and Western Indiana and Eastern Illinois, held in Plainfield, Indiana, in 1864, be referred to the Committee on the Rights and Privileges of the Inhabitants of

the State, with instructions to inquire into the expediency of adopting suitable measures to so amend the Constitution of the State of Indiana as to remove the prohibition of negroes and mulattoes from voting; and also to inquire into the expediency of repealing all laws which impair their evidence in courts of justice, and embarrass their efforts in the cause of education, with leave to report by bill or otherwise.

**228. House Committee Report on Negro Disabilities (March 3, 1865).**

On January 17, Mr. Hiram Prather presented a similar memorial in the House from the Western Yearly Meeting of Friends "praying for the repeal of all constitutional and State laws which divest negroes and mulattoes of their natural rights, and which impair their evidence in courts of justice." This memorial was referred to the Committee on Rights and Privileges, which on March 3 submitted a divided report. The majority report merely recommended that the memorial be laid on the table. The minority report, signed by Mr. John F. Burns, was more elaborate.

*[House Journal, Forty-fourth Session, 758.]*

A minority of your committee to whom was referred the memorial of the Friends Yearly Meeting, held at Plainfield, Hendricks county, Indiana, on the 19th to the 22d of the 9th month, 1864, entreating this body to take suitable measures to repeal all constitutional and statute laws which divest negroes and mulattoes of their natural rights, and which impair their evidence in courts of justice, and embarrass their efforts in the cause of education, have had the same under consideration and respectfully submit the following:

That whereas, the Constitution of the United States, guarantees that the citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several States, and the Declaration of Rights, both of the United States and this State, assert that all men are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness, and the blood and services of men of all complexions have been blended on the common altar of our country, in support of our civil and religious institutions, and the peace, happiness, and prosperity of our nation.

Therefore we recommend to the General Assembly of the State of Indiana, that justice, humanity, and respect to the civil and religious rights of all men, demand the passage of a joint resolution, striking from the Constitution of our State, the

thirteenth article thereof, and that all laws rendering Indians and negroes incompetent witnesses in courts of justice, ought, in accordance with the spirit of the present age, to be repealed during the present session of this General Assembly, and that the act entitled an act to enforce the thirteenth article of the Constitution, approved June 18th, 1852, ought to be repealed.

And inasmuch as the Constitution of Indiana, declares that knowledge and learning generally diffused through a community are essential to the preservation of free government, requires that we shall provide by law, for a uniform system of common schools wherein tuition shall be without charge and equally open to all, and since it is evident that the peace, happiness, and prosperity of a State, must depend upon the proper culture and development of the minds of its citizens of every class, we would recommend that amendments be made to the act approved March the 11th, 1851, entitled an act to provide for a general system of common schools, and the officers thereof and their respective powers and duties, and matters properly connected therewith, etc., etc., so that all of section first, after the words "by law," be repealed, and that taxes be assessed without regard to color, and that colored children be allowed their proportion of the school revenue, to defray the expenses of their education in such way as may seem to them best, when objections are raised to their admission into the common schools in districts in which they reside, and in schools established for the education of colored children.

And we believe that your concurrence in the views expressed in the foregoing report will redound to the honor and glory of our noble State, as an integral part of our glorious Union, which ought, literally, to be the land of the free, as it is the home of the brave.

Both reports were laid on the table and not subsequently considered.

#### **229. Calling a Constitutional Convention (January 12, 1865).**

The slow and unsatisfactory process of procuring amendments to the Constitution by the legislative method and the necessity for rather comprehensive changes led to the introduction of two measures for the calling of a constitutional convention. Both of these propositions were introduced in the House. The first proposal was inspired by the fact that the soldiers were deprived of the right of suffrage, and it was submitted by Mr. Austin M. Puett, a Democrat, on January 12, as a resolution of inquiry, to the Committee on the Judiciary. Apparently no report was ever made.

*[House Journal, Forty-fourth Session, 87.]*

WHEREAS, Under the present Constitution of Indiana the

brave men now in the field are deprived of the privilege of voting; and

WHEREAS, The mode of amending the Constitution provided in the instrument itself is so slow and uncertain in its operations; and

WHEREAS, There are other amendments desirable, as indicated by former votes of the legislature of Indiana, but which have failed to be made, not because of popular opposition, but because of the inherent difficulties of the mode prescribed; therefore,

*Resolved*, That the Committee on the Judiciary be instructed to prepare and report at an early day, a bill which shall provide, in substance, as follows:

The qualified voters of the State may, on the first Monday in April, 1865, elect one delegate in each senatorial district in the State to a convention for revising and amending the Constitution of the State.

2d. That delegates so elected shall meet at the capitol on the first Monday in May, 1865, and proceed to the work assigned them.

3d. The Constitution so amended shall be submitted to a special vote of the people on the first Monday in August, 1865.

4th. If a majority of the voters of the State shall agree to adopt it as the Constitution of the State, in lieu of the present Constitution, then the Governor shall issue proclamation to that effect on the first Monday in September, and it shall go immediately into operation as such.

### **230. Calling a Constitutional Convention (February 1, 1865).**

On February 1, Mr. J. M. McVey, a Republican, introduced a bill to provide for the call of a constitutional convention. The bill was referred to the Judiciary Committee who reported it back on March 6, without recommendation and it was laid on the table.

*' [House Journal, Forty-fourth Session, 249.]*

House bill No. 96. A bill to provide for the call of a convention of the people of the State of Indiana, to revise, amend, or alter the Constitution of said State; to defray the expenses of said convention; to submit the Constitution, as amended, to a vote of the people, and all other things necessary to give force to the act.

### **231. Disfranchisement of Fugitives from Military Draft (January 19, 1865).**

A quasi-constitutional question was involved in a proposal to deprive



persons of the right of suffrage who had fled the State to avoid the draft. Apparently, no recommendation was made.

[*House Journal, Forty-fourth Session, 130.*]

*Resolved*, That the Committee on Elections be instructed to inquire into the constitutionality and propriety of the passage of an act depriving from the rights of suffrage those persons who have fled, or may flee, to Canada, or any other foreign country, to evade the draft, and thus release themselves from the allegiance they are under to the laws and constitution of their own country.

**232. Acknowledging God as the Source of all Authority (February 27, 1865).**

During the stress of the war there was an undoubted revival of religious enthusiasm, rather effervescent and perfervid, but none the less genuine. This pious sentiment expressed itself in various ways and was almost invariably intolerant and reactionary. A curious example of this propaganda was supplied by a memorial presented to both houses of the General Assembly, signed by Calvin Fletcher, Sr., of Indianapolis, and 452 other persons, and recommending the adoption of a constitutional amendment acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the ruler among nations, and his revealed will as of supreme authority. The Jewish citizens of the city of Indianapolis protested against the adoption of this proposed amendment. The House committee brought in a divided report; the majority of the committee recommended the adoption of the proposed resolution, and the minority, on the theory, fully sustained, that the incorporation of the proposed amendment in the Constitution would constitute religious discrimination, recommended that the memorial be laid on the table. The Senate committee brought in an adverse report. Both House reports were laid on the table and the Senate report was concurred in.

[*House Journal, Forty-fourth Session, 640.*]

Mr. Thomas W. Reese, from a select committee, made the following majority report:

The special Committee on Constitutional Amendments to whom was referred the petition of Calvin Fletcher, Sr., and four hundred and fifty-two other christian gentlemen, have had the same under consideration and a majority of said committee have directed me to introduce the accompanying resolution and amendment to the preamble to the Constitution of the State of Indiana and recommend the passage of the same.

We recommend these amendments, *first*, because they contain nothing but pure christian patriotism, are not sectarian, but like the Bible, are of universal application and will secure the



life and salvation of this nation, for it is written in the Holy Prophecies that "the nations that forget God shall be utterly wasted and perish from off the face of the earth." *Secondly*, it is in perfect harmony with our republican form of government, only proposing to acknowledge God's Divine authority in the affairs of men, and christianizing and making ours the model government of the earth, and what is required by God's moral ordinance to man for good, and what all nations of the earth must and will be in that good time coming, when all shall become christian Republics. The people under God being the source of all power in civil government, none other can have God's favor.

*Thirdly*, We recommend these amendments because they harmonize our form of government with christianity, State, national and over all the Divinely instituted governments of God from whom all power is derived. All despotisms must perish off the earth because of their transgression.

*Fourthly*, By adopting these amendments we will propitiate the favor of Him who chastiseth nations for national sins, and when all nations recognize the authority and government of God, and practice the precept taught by His Son, then wars shall cease and the millenium begin, and all the people shall dwell together in peace and harmony.

Mr. Charles B. Lasselle, from the same committee, made the following minority report:

The undersigned, members of the select Committee on Constitutional Amendments, to whom were referred the petitions of various citizens, praying that an amendment be proposed to the preamble of the constitution of the State, "acknowledging Almighty God as the source of all authority and power in civil government; the Lord Jesus Christ as the ruler among nations, and His revealed will as of Supreme authority," have had the same under consideration, and beg leave to submit the following as a minority report of the matters therein referred to:

The proposed amendment is prayed for by gentlemen of the christian faith. The present Constitution of the State fully acknowledges the existence and supremacy of Almighty God, according to the christian faith in the orthodox acceptation. The Lord Jesus Christ is God. The constitution, therefore, according to the belief of the petitioners themselves, already sufficiently acknowledges the supremacy of the Savior, Lord

Jesus Christ, and any further amendment of the Constitution, in this respect, can not be necessary to them.

The State of Indiana is not a theocracy, nor a hierarchy, but a civil or political organization, instituted by the people of the State, under the sanctions of the Constitution, "to the end that justice be established, public order maintained, and liberty perpetuated." To secure these objects, certain inherent rights are defined, and equally guaranteed to every citizen. Among these rights stands pre-eminent the right to the enjoyment of religious opinions. Thus, the Constitution opens with the following guaranties:

Sec. 2. All men shall be secured in their natural right to worship Almighty God, according to the dictates of their own consciences.

Sec. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Sec. 4. No preference shall be given by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent.

Sec. 5. No religious test shall be required as a qualification for any office of trust or profit.

Sec. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

Sec. 7. No person shall be rendered incompetent as a witness in consequence of his opinions on matters of religion.

From the above provisions of our matchless Constitution, there is no mistaking the sentiment of the people of Indiana on the question of the right to the full and unrestricted enjoyment of religious opinions. Notwithstanding their own predilections, they fully accord to each other, however diversant, the undisputed possession of this natural right, having learned enough of the bigotries, persecutions and miseries that have oppressed other nations by an abandonment of this policy. They seem to be immovably settled upon this principle.

Among the people of Indiana there are many citizens, religionists and non-religionists, who do not coincide with the petitioners in their creed, as to the character of the Lord Jesus Christ; whether wrong or not, is of no consequence to the remaining portion of the people of Indiana as citizens of a State. They may deem them wrong in a religious point of view, yet grant them

the same right of opinion as they themselves enjoy, as citizens under the Constitution of the State. Simply acknowledging the supremacy and beneficence of an Almighty God, about which there can be no controversy among the nations of the earth, the people of Indiana leave all questions, affording any grounds for differences of religious opinions, to the sole determination of each individual.

Governed by this principle of equal, exact justice, they have grown prosperous, united and happy. Any innovation in this respect, however trivial or necessary it may seem to some, might eventually precipitate us into those religious strifes and oppressions, that have disturbed the peace and liberties of other nations. We are, therefore, satisfied that the adoption of the proposed amendment would be destructive of natural right, hostile to the true policy and intents of the State, and that the same is not desired by the people.

In addition to the foregoing considerations, there is another objection to the adoption of the proposed amendment, which, to the undersigned, appears insurmountable. It declares the "Lord Jesus Christ as the ruler among the nations, and His revealed will as of supreme authority."

This proposition is intended to fix a standard of government for the people paramount to all temporal enactments, constitutional or legislative, and to introduce into this State that "higher law" doctrine, by which each citizen is to be governed by the sanctions of his own conscience, or by his own construction of the "revealed will."

The Constitution of this State, as it now stands, is simple in its terms, easily understood by all, and universally agreed to as interpreted by the people, or as expounded by the Supreme Court. On this point there seems to be no diversity of sentiment. But for many ages past there have been wide differences of opinion among christian nations, and communities themselves, as to what the "revealed will" was upon many vital questions. And there appears to be no diminution of this diversity of opinion. Under the proposed standard of "supreme authority" the inevitable result would be collisions of greater or less extent among christian communities themselves, eventuating in the supremacy of one party over all the others. Under these circumstances it would be extremely perilous, if not certainly futile to the people of Indiana, to surrender their present form of government, so plain

and certain in its character, and so beneficent in its operations, for one so impracticable in its aspects.

For the reasons thus briefly, and but partially given, the undersigned beg leave to report that they deem the adoption of the proposed amendment to the preamble of the Constitution of the State as unnecessary and inexpedient, and recommend that the petitions praying for the same do lie upon the table.

CHARLES B. LASSELLE,  
JAMES HARRISON.

[*Senate Journal, Forty-fourth Session, 434.*]

The Committee on Rights and Privileges of the inhabitants of the State, to whom was referred a proposed amendment to the Constitution of the State, and to request our representatives and instruct our senators, to use their influence to have the same amendments incorporated into the Constitution of the United States, said proposed amendments acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the ruler among the nations, and His revealed will as of supreme authority, have had the same under consideration, and have instructed me to report thereon.

*First*, as regards our State Constitution, the recognition of the great Creator is full and ample in the preamble, and that, as a general principle, the Christian religion has as full and complete a recognition in our laws, both primary and secondary, as is practicable or desirable, while your committee are of the opinion that it might be for the better for all the people to be Christian in faith and practice, and in addition to this fact it is the lesson of experience, that it is a very doubtful question if the cause of pure religion ever was, or in the nature and fitness of things, ever can be, properly advanced by connecting and wedding it to and with the civil government. A union of Church and State, is full of unmixed evil to both organizations; paralyzing to and destructive of the highest and greatest good of both; and as far as may be, to be prevented. There ought not to be, of right, any other qualification for office in a free people, than that of citizenship, and a freedom from crime; and errors of faith are not crimes, and of right ought not to be made so, by human enactment. Civil and religious liberty are the safeguards of individual liberty, harmonious and competent to effect the end aimed at in human government, while moving and operating



in their appropriate spheres, but crippled and hindered whenever and wherever they are improperly joined together. Your committee are of opinion that any legislation upon the subject is unwise and inexpedient, and they ask to be discharged from any further consideration of the subject.

They cannot lose sight of the great truth that such is not the fact, and that rights of conscience, and of faith, are rights which are not, and of right ought not, to be restrained, coerced or imperiled by human legislation. That these rights are above and beyond the dictum or arbitration of human law, and that for the use, or even the abuse of them, the individual is responsible to God alone. That while our government, both State and national, is, both in theory and in fact, Christian, and known as such in all the world, there are thousands upon thousands of citizens of the State, and the nation, that are not Christian; and in all human probability the proposed change would not in any degree tend to aid or assist their conversion or change of faith, however desirable such change may be; and it must be remembered that all of this class, or classes, have the same inalienable rights by the endowment of the great Creator; that the genius and spirit of our institutions absolutely forbid any and all interference, either direct or indirect, with these God-given rights upon principle.

**233. Duration of a Regular Legislative Session—Ex-Parte Opinion (March 3, 1865).**

In 1865, the question of the duration of a legislative session was still controverted. Owing to the large amount of business to be transacted an extension of the session for a few days would enable the General Assembly to complete their work. Accordingly, Governor Morton asked the opinion of four of the judges of the Supreme Court and was advised that the sixty-one day limit fixed by the Constitution embraced "business days" only. This opinion was in contravention of the uniform legislative practice under the present Constitution and is significant as one of the few attempts in this State to obtain an ex-parte opinion of the Supreme Court by the General Assembly. The Governor sent a message to the two houses on March 3, embracing this opinion.

*[Senate Journal, Forty-fourth Session, 538.]*

A message from the Governor, to the Senate of the State of Indiana:

The Constitution of the State limits the legislative term to



sixty-one days. In counting these days heretofore, Sundays have been included. I am satisfied, however, from a careful examination of the Constitution in connection with several usages and principle of law, that are well recognized, that the practice has been erroneous, and that sixty-one working days are meant.

By common consent in this and other States, Sunday is not considered a legislative day, and it is especially excepted from the three days, during which the Governor has time to consider a bill.

In analogy to this, Sunday is not considered as a judicial day, to be counted in the term of court in any State where the common law prevails. It will not be deemed by any one that the legislation term established by the Constitution, as heretofore construed, is too short for the dispatch of the necessary business of the State; and if, by proper construction, it can be extended for a few days, it will be of great importance to the public interest. Accordingly, I have asked the opinion of the four judges of the Supreme Court upon the question, which they have given to me in writing:

Indianapolis, March 3d, 1865.

*To His Excellency, O. P. Morton, Governor:*

Sir: In response to your request for our opinion, whether the term of sixty-one days, to which the session of the legislature is limited by the Constitution, includes intervening Sundays, we beg to say that we have given the subject such consideration as time would permit, and that we deem the better opinion to be that business days only are embraced. Various considerations tend so strongly to support this view, that if a contrary practice had not heretofore prevailed, we would hardly entertain a doubt upon the subject.

If the legislature should now be of the opinion above indicated, and should act upon it, of course it would go far to annul the influence of the former practice of that body as a precedent; and at any rate, if the question be deemed a doubtful one, the courts would not, it is well settled, be justified in holding void the action of a co-ordinate department.

This being simply a question of public importance, which cannot, as we suppose, involve any party consideration, or mere private or personal interests, we have felt no delicacy in giving our view upon it. We have not meant, however, to depart from that

rule of silence which we have prescribed to ourselves as to measures of legislation which may be pending.

CHARLES A. RAY,  
J. T. ELLIOTT,  
JAS. S. FRAZIER, ((Frazer))  
R. C. GREGORY.

I have also consulted the President of the Senate, and the Speaker of the House of Representatives, both able and learned lawyers, and find that they concur in the opinion expressed by the judges of the Supreme Court.

In view of the importance of the subject, and the present condition of the business of the legislature, I have thought it proper to call your attention to the subject in a special message.

O. P. MORTON,  
*Governor of Indiana.*

**234. Minority Senate Committee Report on Duration of Legislative Sessions (March 6, 1865).**

By a vote of 33-14, the Governor's message was taken up for consideration by the Senate, and by a vote of 41-5 it was referred to the Judiciary Committee. On March 6, the committee submitted a divided report. Both reports agree in the conclusion that the duration of a legislative session is still sixty-one days, including Sundays. The minority report, submitted by Mr. John B. Niles, is as follows:

*[Senate Journal, Forty-fourth Session, 583.]*

The Judiciary Committee, to whom was referred the message of the Governor in regard to the right to prolong the present session of the General Assembly, report that they have spent considerable time in consultation on the subject without having arrived at a unanimous conclusion.

But the committee are of opinion that it is not advisable to depart from the established usage, and to now unsettle what has been for fourteen years the practical construction of the Constitution. The committee, therefore, recommend that the session do not extend beyond sixty-one days, counting by revolutions of the earth on its axis.

**235. Majority Senate Committee Report on Duration of Legislative Sessions (March 6, 1865).**

The majority report was submitted by Mr. Alexander C. Downey and was signed by three members of the committee.

[*Senate Journal, Forty-fourth Session, 584.*]

The majority of the Judiciary Committee, to whom was referred the question in regard to the length of the sessions under the Constitution, according to order report as follows:

This session of the General Assembly began on the 5th day of January, 1865, and the question is, where must it end? The language of the Constitution on the subject is found in section 29 of article 4, and is as follows: "No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days; nor any special session beyond the term of forty days."

Words are to be understood in their plain and ordinary sense. A "civil day," or a day when mentioned in a Constitution or statute, means a period of twenty-four hours, beginning and ending at 12 o'clock at night. Sunday is a day as well as week days.

There is no difficulty in arriving at what is meant by the word "session." It means, in this instance, the time during which the legislature sits, with occasional intermissions of a day or more, until its final adjournment.

The word "term," used in this clause of the Constitution, and as used in eight or ten other places in the same instrument, means a period, or length of time, from one given date to another. To find the true meaning of the word when it is used in the Constitution, we must look at other parts of that instrument as well as the one under consideration. All parts of it were made at the same time and by the same persons. A strange use may be made of a word in an instrument, but if you find the word used in many other places in the same paper, in the same sense, it must have the meaning which from the whole instrument the party intended it to have. We do not mean to say that the word is improperly used in this instance. We think it is not. Let us look to its meaning in other places in the Constitution. In article 2, section 6, the word "term" is used with reference to the term during which a person may hold office. In Article 4, Section 3, it is said senators shall be chosen for a term of four years and representatives for the term of two years. In Article 5, Section 9, the official term of the Governor and Lieutenant Governor shall commence, etc. In the same Article, Section 22, it is provided that the Governor's salary shall not be increased or diminished during the term for which he shall have been elected; and in Section 24,

neither the Governor or Lieutenant Governor shall be eligible to any other office during the term for which he shall have been elected. In Article 7, Section 9, circuit judges shall hold their office for the term of six years, etc.; and in Section 16 of the same article, no person elected to any judicial office shall, during the term for which he was elected, etc. In the fifth clause of the schedule the word is used, and in the thirteenth clause it is twice used in the same sense.

We cannot see that it can make any difference whether the period of time is to be computed by days, weeks, months or years. It is a continuous period, made up of successive days, in either case, and as Sundays are days, why should they be excluded, unless the language or words used, of which a proper construction is sought, expressly require.

Had the language of the Constitution been that the General Assembly should not sit, or not be in session, more than sixty-one days, it might then be construed to exclude all days where the legislature was not actually in session or doing business, as well Sundays as other days.

At this session, the sixty-one days, if we include Sundays, expires on the 6th of March, now if the General Assembly shall be in session on the 10th of March, is not that beyond the term of sixty-one days from the time the session began?

We think that when a period of time is to be reckoned in days, months or years, that Sundays must be included, unless expressly excluded. If money is to be paid, or any other act performed, in thirty, sixty, or any other number of days, the Sundays following within that time must be counted. Such is the rule in computing the ten days' notice to a party sued, and such is the rule where a party is required to appeal within a certain number of days. The Sundays are counted against him, and yet they are not days on which he should be engaged in preparing his defense, or perfecting his appeal.

Where it is intended that Sundays shall be excluded, it is so expressed in the Constitution, and in our statutes, and as Sundays are excepted in the section in regard to the approval of bills by the governor, it furnishes ground to suppose that if it had been intended in the other case it would have been so expressed.

Sundays and certain holidays are spoken of as non-legislative days; but we do not understand by this, that legislative business cannot be done on these days, but only that by a kind of common consent it is not done. It is expressly laid down in Cushing's

Manual, that legislative business may be done on Sunday, and instances can be cited where it has been done, but still he says Sunday is a non-legislative day. We must not be understood as saying that legislative business ought to be done. But suppose the legislature should sit on each successive day from the commencement of the session, and suppose bills to have one of their indispensable readings, or to be passed on Sunday, would the act be void? There is no provision in the State Constitution which prevents the legislature from being in session on Sunday. Legislation is not enumerated among the acts prohibited by the Sunday law. If it was might it not in some plausible case become a work of necessity, and for that means be allowable?

There was a reason for fixing upon sixty-one days as the length of the session, rather than some more convenient and even number of days. By a previous section of the Constitution, the time when the session was to begin was fixed. It was fixed for Thursday after the first Monday in January, counting sixty days from that time and the sessions would always close or the time would expire on Sunday. We know from some who were members of the Convention, and that is pretty commonly understood, that sixty days was the term first agreed on, and that the odd day was added to prevent the termination of the period on Sunday. The legislature has some kind of limitation of its session prior to the adoption of this constitution, but as it was only by virtue of a statute, it was subject to change, and as we now recollect, it operated only by way of reducing or cutting off pay after a certain lapse of time.

Contemporaneous construction of constitutions and statutes is of very great weight in ascertaining their true meaning; and by this we mean not only what occurred at the exact time, but also that which prevailed soon afterwards. The reasons for this are, that those who are acquainted with the causes, which induced the making of the provision, or enactment, and first had occasion to act upon it, are presumed to be better able to know its true construction, than those who live at a more remote period.

The first session of the legislature under the present Constitution, was unlimited as to its duration. At the next session, that in 1853, very little legislation was necessary, and the term closed before the sixty-one days expired, Sundays included. But an able report [was submitted] on this subject [and is given] in House Journal, pages 449 and 450, in which it is shown that Sunday must be included.



At the session in 1857, the question was raised and settled by a concurrent resolution passed by both houses, which is found on page — of the Journal of the House.

Then the session began on the 8th of January, and, according to the resolution, ended on the 9th day of March, which made just sixty-one days, Sundays included.

At the session in 1859, in House Journal page 908, the opinion of the Judiciary Committee is given in accordance with our opinion.

At the session in 1861, the subject was referred, in the House, to the Judiciary Committee, and their report is found on page 961.

This session began on the 10th of January, and ended on the 11th of March, just sixty-one days, Sundays included.

At the session in 1863, and on the 12th day of February, 1863, resolutions were introduced and adopted, as found on page 330, of the Senate Journal.

Which shows that it was then believed the session ended in 61 days, Sundays included.

For these reasons we come to the conclusion that the session must end at the expiration of the term of sixty-one days, including Sundays, and that bills could only be presented to the Governor for approval as late as Saturday, the 4th inst. We recommend the adoption of the same resolution, which was adopted by both houses in 1857, changing only the dates to make it apply to the present year, as follows:

Resolved, That this session of the General Assembly, which began on the 5th day of January, must end on the 6th of March, and that bills could be presented to the Governor as late as the 4th.

PARIS A. DUNNING,  
FRANCIS T. HORD,  
THOS. R. COBB.

By an indirect vote, both reports were laid on the table, the first by a vote of 23-21 and the second by a vote of 24-23.

#### **236. Majority House Committee Report on Duration of Legislative Sessions (March 6, 1865).**

In the House, the Governor's message was referred to a select committee which presented a unanimous report with two slightly dissenting opinions. The report of the committee was as follows:

[*House Journal, Forty-fourth Session, 856.*]

The special committee to whom was referred the message of the Governor, in reference to the construction of the duration of the term of the legislature, whether sixty-one legislative days was intended excluding Sundays, have had the same under consideration and have instructed me to report, that in the opinion of the committee, without entering into a discussion of authorities, or giving a legal reason for our conclusion, we have unanimously agreed that it would be inexpedient to unsettle the now established rule of construing the session, to be sixty-one consecutive days including Sundays.

**237. First Minority House Committee Report on Duration of Legislative Sessions (March 6, 1865).**

Mr. Horatio C. Newcomb, a member of this committee, presented the following report:

[*House Journal, Forty-fourth Session, 875.*]

The undersigned, one of the Select Committee, to whom was referred the message of the Governor, with the opinion of the judges of the Supreme Court, as to the number of legislative days allowed by the Constitution to the General Assembly, beg leave to say, that he agreed to the majority report, because he deemed it doubtful whether a quorum could be kept in attendance for a longer period at the present session, and because he had been informed that the Judiciary Committee of the Senate had reported against a continuance of the session.

The undersigned further states, that he agrees in opinion with the Governor and Judges as to the legal question involved, but regards it as unnecessary to go into the reason for his opinion in view of the impracticability of extending the session.

**238. Second Minority House Committee Report on Duration of Legislative Sessions (March 6, 1865).**

Samuel H. Buskirk and John R. Coffroth presented the Downey report of the Senate. (See Document No. 235.)

**239. Suspension of the Rules (January 17, 1865).**

Another quasi-constitutional question which arose during the Forty-fourth session was in regard to the suspension of the rules by a two-thirds vote. Did the Constitution mean two-thirds of the members elected to the House or only two-thirds of a quorum or of the members present?

Accordingly, on January 17, a resolution was adopted by the House instructing the Judiciary Committee to report their opinion on this question, and to report also whether it requires two separate motions or only one to suspend the rules. Apparently no report was made.

*[House Journal, Forty-fourth Session, 105.]*

WHEREAS, There is no settled rule established, as yet, in reference to the suspension of the rule by a two-thirds vote, so as to authorize the reading of a bill more than once upon the same day; therefore,

*Resolved*, That the Committee on the Judiciary be and are hereby instructed to investigate and report, at their earliest convenience, setting forth their reasons from which they arrive at a conclusion, as to whether the two-thirds vote, as required by the Constitution, means two-thirds of all the members elected to the House, or only two-thirds of a quorum or of the members present.

That the Committee on the Judiciary be also instructed to enquire whether it requires two separate motions, or only one to suspend the Constitutional rule requiring a bill to be read on three separate days, and, also, by sections instead of by its title.

THE SPECIAL SESSION OF 1865 (November 13 to December 22).

The extra session of 1865 was convened on November 13 to dispose of unfinished business and to enact measures which attention to a state of war had caused to be neglected. The personnel of the two houses was unchanged. All told, five constitutional measures were proposed, including the excision of the thirteenth article concerning the immigration, colonization and political and civil disabilities of negroes, annual sessions of the General Assembly, enabling school corporations to levy supplementary taxes for the support of common schools, extending the right of suffrage to women, and constituting a majority of the members elected to each House a quorum to transact business. None of these measures were passed. Scores of petitions were presented in both houses concerning the civil and political disabilities of negroes and the liquor traffic, but it is not clear that any of these memorials recommended constitutional changes.

#### 240. Negro Exclusion and Colonization (November 16, 1865).

At the regular session of 1865, Mr. F. M. Meredith's resolution proposing to strike out the thirteenth article of the Constitution relative to the exclusion, colonization and civil and political disabilities of negroes was advanced to third reading. As the special session was merely a continuation of the regular session, all unfinished business could be taken up for consideration. Accordingly the measure was taken up for consideration on November 16 and made the special order for November 21, when it was

again made the special order for November 23. After ineffectual action on the measure on the latter date, its consideration was discontinued until the following day, when it was referred to the Judiciary Committee. On November 28, a majority of the committee recommended the passage of the resolution without amendment and the minority recommended indefinite postponement. On November 30, the resolution passed by a vote of 51-41. On December 8, after consideration, the Senate, by a vote of 21-22, refused to advance this resolution to engrossment and apparently no further action was had. (See Document No. 226.)

#### **241. Annual Sessions of the General Assembly (November 17, 1865).**

Introduced in the House by Mr. Francis P. Griffith, a Republican, on November 17. On November 30, the resolution was put upon its passage and was lost by a vote of 39-48.

*[House Journal, Called Session, 1865, 94.]*

Joint resolution No. 17. A joint resolution amendatory of Section 9 Article 4 of the Constitution of the State of Indiana, so as to provide for annual sessions of the General Assembly.

#### **242. Annual Sessions of the General Assembly (December 9, 1865).**

On December 9, Mr. Brown of Wells, a Democrat, introduced a similar resolution in the Senate. On December 13, the resolution was referred to the Judiciary Committee but there is no evidence that the resolution was ever reported back.

*[Senate Journal, Called Session, 1865, 336.]*

Senate joint resolution No. 23, entitled "A joint resolution for the amendment of Section 9 Article 4 of the Constitution, so as to provide for annual sessions of the legislature."

#### **243. Supplementary Common School Tax Levies (November 17, 1865).**

Joint resolutions Nos. 3 and 4 which were introduced by Mr. Bartlett Woods during the regular session, had been laid on the table. On November 17, on motion of the author, both resolutions were placed on the files. On November 28, resolution No. 4 was referred to the Judiciary Committee with instructions to rewrite it if necessary, to conform to the requirements of Article 16 of the Constitution. On November 30, resolution No. 3 passed the House by a vote of 56-31. Apparently, Resolution No. 4 was never reported by the committee. The Senate Journal does not disclose that any action was taken on Resolution No. 3. (See Document No. 225.)

#### **244. Woman Suffrage (December 4, 1865).**

On December 4, Charles B. Lasselle, a Democrat, introduced a joint resolution in the House proposing to so amend the Constitution as to extend

the right of suffrage to females. The resolution was referred to the Select Committee on Constitutional Amendments. On December 14, the committee presented an elaborate report and recommended the passage of the resolution. The report was laid on the table and apparently not subsequently considered.

*[House Journal, Called Session, 1865, 455.]*

That this proposition is a very novel and important one, and involves questions of the highest moment to the female sex in particular, and to the community of the State in general. It has never before, to the knowledge of this committee, arisen in such form as to elicit discussion in any legislative body, or by the public generally, and it is invested with many speculations as to the expediency and effect upon the condition of society.

As a question of abstract right, the committee have no doubt, that, in accordance with the principles of a democratic form of government, females are entitled to the right of suffrage. But as to the political and moral results of the grant and exercise of this right, they are not so clear; yet in view of the past history and character of the female sex, in all ages and positions, the committee are of the belief that the enforcement of this right by the women of Indiana, would not only tend to exalt and ennoble the sex themselves, but would eventually tend to promote the general welfare.

The original resolution was as follows:

*[House Journal, Called Session, 1865, 316.]*

Joint resolution No. 22. A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State, so as to extend the right of suffrage to females as well as males.

**245. Defining a Quorum of the General Assembly (December 5, 1865).**

On December 5, Mr. Michael F. Shuey, a Republican, introduced a resolution defining what shall constitute a quorum of each House of the General Assembly. The resolution was referred to the Judiciary Committee.

*[House Journal, Called Session, 1865, 316.]*

Joint resolution No. 23. A joint resolution to amend the eleventh section of the fourth article of the Constitution, so as to constitute a majority of the members elected to each house of the General Assembly, a quorum to do business.

On December 14, the committee reported favorably, the report was laid on the table, and not subsequently considered.



[*House Journal, Called Session, 1865, 453.*]

It seems to the committee that the legislative history of the State, since the adoption of the present Constitution, is the strongest possible argument in favor of the proposed amendment. The power now given to a minority—a power, too, that has been frequently exercised—to suspend the legislative power of the State by a withdrawal from the house of which such minority are members, is opposed to the principles of a representative government, and makes the minority more powerful than the majority, as one-third of either house may prevent the passage of a bill, while the Constitution requires the affirmative vote of all the members elected to each house, when a quorum of two-thirds or more is present.

The inconvenience of the present rule is further illustrated by the difficulty experienced in keeping a quorum for the transaction of business. The sickness of members, and the necessary absence of others, frequently compel a clear majority of either house to suspend business, to the great detriment of the State and the prejudice of its treasury.

**246. Union (Republican) Platform of 1866—Qualification of Electors (February 22, 1866).**

The Republican Party, assembled in convention in Indianapolis on February 22, 1866, adopted the following resolution relative to the qualifications of electors which the issues of the war had rendered paramount.

[*Indianapolis Journal, February 23, 1866.*]

*Resolved*, That, under the Constitution of the United States, the power to determine the qualifications requisite for electors in each State, rests with the States respectively.

**247. Democratic Platform of 1866—Negro Exclusion Article (March 15, 1866).**

The Democratic Party, assembled in convention in Indianapolis on March 15, 1866, adopted the following resolution relative to the repeal of the thirteenth article of the Constitution providing for negro exclusion and colonization. (See Documents Nos. 226 and 240.)

[*Indianapolis Journal, March 16, 1866.*]

*Resolved*, That we are opposed to the repeal of the thirteenth article of the Constitution of Indiana prohibiting negroes and mulattoes from settling in this State, and now, more than ever,

deprecate the entrance of that class of persons within its borders; and we most emphatically condemn and disapprove the action of the Republican majority in the late General Assembly of Indiana in passing through the House a joint resolution providing for the abrogation of that article in the Constitution.

### THE FORTY-FIFTH GENERAL ASSEMBLY (1867).

The Forty-fifth General Assembly of 1867 was largely Republican in both branches. The Senate consisted of 30 Republicans and 20 Democrats, and the House of 61 Republicans and 39 Democrats. At the preceding regular and special sessions of 1865 an unsuccessful attempt had been made to repeal the thirteenth article of the Constitution which prohibited negroes and mulattoes from coming into the State and declared void all contracts made with such negroes and mulattoes as should come into the State contrary to its provisions. At the May term of 1866, the Supreme Court, in *Smith v. Moody*, 26 Ind. 299, held that the thirteenth article of the Constitution was null and void as being repugnant to the Constitution of the United States. In his message to the General Assembly on January 11, 1867, Governor Morton referred to this decision and recommended "that as an act of public decency it be formally repealed and wiped out." He also recommended the passage of a registry law, and, after reviewing the evidence, gave his opinion that such a law would be constitutional. Some of the recommendations of the Governor were carried out. A registration law was enacted and approved on March 11, 1867, and the act of June 18, 1852, entitled "An act to enforce the thirteenth article of the Constitution" was repealed by an emergency act approved February 22, 1867. The registry law of 1867 was amended in 1869 and both acts, prescribing a residence qualification for electors, were declared unconstitutional in *Quinn v. State*, 35 Ind. 485.

No constitutional amendments were adopted, although amendments on the following subjects were proposed: A supplementary local common school revenue; annual sessions of the General Assembly; unlimited legislative sessions, but limitation of compensation to ninety days of an annual session and forty days of a special session; prohibition of the assumption of any debt of the Wabash and Erie Canal; and constituting a majority of the members elected to each house a quorum to transact business.

#### 248. **Supplementary Common School Revenue; Annual Unlimited Sessions; Wabash and Erie Canal (January 29, 1867).**

At the regular session of 1865, a resolution had been adopted proposing an amendment to Article 8 of the Constitution so as to enable cities and towns to levy taxes for the support of common schools. On January 29, Mr. T. J. Cason, a Republican, introduced a bill to provide for the submission of this resolution to the people at the general election of 1867, which was referred to the Judiciary Committee. On February 22, the committee reported the bill back to the Senate with a slight amendment and the recommendation that the bill pass. On February 23, the bill was referred to a select committee of five with instructions to "inquire into the expediency

of a more general amendment of the Constitution." On March 5, the select committee made a report relative to constitutional amendments, recommending that the original bill be laid on the table and the following proposed amendments, embodied in a concurrent resolution, adopted.

[*Senate Journal, Forty-fifth Session, 753.*]

By adding the following to Article 8:

*Resolved by the Senate, the House concurring,* That the Constitution of this State be amended so as to read as follows:

Incorporated cities, towns and townships shall have power by taxation, under regulations prescribed by the General Assembly, to raise revenue for the support of common schools in addition to the revenue derived for that purpose from the State.

Amend Section 9, Article 4, as follows:

The sessions of the General Assembly shall be held annually at the capital of the State, commencing on the first Thursday in December after this amendment has been ratified as provided for in the Constitution, and on the same day of each year thereafter, unless a different day or place shall be appointed by law. But if, in the opinion of the Governor, the public welfare require it, he may, at any time, by proclamation, call a special session.

Amend Section 29, Article 4, as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made.

No session of the General Assembly shall be limited by law; but the members thereof shall receive no compensation for their services after the first ninety days of the annual session shall have expired; and the first forty days of the special session shall have expired.

The changes proposed by the committee made it necessary to submit the proposition to the next succeeding General Assembly for ratification. Thereupon, Mr. Cason, the author of the bill, moved that the select committee consider the expediency of adding the following section relative to the assumption of the debt of the Wabash and Erie Canal, and with these instructions and the further suggestion that the committee inquire into the expediency of so amending the proposition as to make it a joint resolution, the measure was recommitted.

[*Senate Journal, Forty-fifth Session, 754.*]

Sec. —. The General Assembly of the State of Indiana shall never incur any debt or liability, or recognize any claim or demand

arising out of or connected with the Wabash and Erie Canal, or matters pertaining thereto except as provided in an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," approved January 19, 1846, and an act supplemental thereto, entitled "An act supplementary to an act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville, approved January 19, 1846," approved January 27, 1847, and the said acts shall never be construed so as to in any manner create any moral or legal obligation on the part of said State to incur any liability or obligation on her part other than is expressly provided in said acts, and that the General Assembly of said State are hereby prohibited from ever incurring any liability on account of the said Wabash and Erie Canal, or any matter arising from or growing out of the same, except as herein provided.

On March 7, the select committee made its report. They approved of Mr. Cason's Wabash and Erie Canal amendment and recommended its adoption. However, they could "perceive no necessity for a change in the form of the resolution," and they therefore recommended the measure in the following form:

*[Senate Journal, Forty-fifth Session, 835.]*

*Resolved by the Senate of the State of Indiana, the House of Representatives concurring, That the Constitution of the State of Indiana be amended so as to add the following provision:*

"Incorporated cities, towns and townships, shall have the power by taxation, under regulations prescribed by the General Assembly, to raise revenue for the support of common schools, in addition to the revenue derived for that purpose from the State."

And that it also be amended to add the provision:

"The General Assembly of the State of Indiana shall never incur any debt or liability, or recognize any claim or demand whatever, arising out of or connected with the Wabash and Erie Canal, or matters pertaining thereto, except as provided in an act entitled an act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville, approved January 19, 1846, and an act supplemental thereto, entitled an act supplementary to an act to provide for the funded debt of the State of Indiana, for the completion of the Wabash and Erie Canal, approved January 19,



1846, approved January 27, 1847, and the said acts shall never be construed so as in any manner to create any moral or legal obligation on the part of said State to incur any liability or obligation on her part other than is expressly provided in said acts."

And that Section 9, Article 4, which reads as follows:

The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if in the opinion of the Governor, the public welfare require it, he may, at any time, by proclamation, call a session; be amended to read as follows:

The sessions of the General Assembly shall be held annually at the capital of the State, commencing on the first Thursday in December after this amendment has been ratified as provided for in the Constitution; and on the same day of each year thereafter, unless a different day or place shall be appointed by law. But if in the opinion of the Governor the public welfare require it, he may, at any time, by proclamation, call a special session.

And that section twenty-nine, article four, which reads as follows:

The members of the General Assembly shall receive for their services, a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made.

No session of the General Assembly except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days, be amended to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall be limited by law, but the members thereof shall receive no compensation for their services after the first ninety days of the annual session shall have expired; and the first forty days of the special session shall have expired.

Immediately after the reading of the proposed resolution, the Senate resolved itself into a committee of the whole and after some time spent in the consideration of the measure they recommended that the first section relative to additional revenue for the support of common schools be adopted,



that Section two relative to the Wabash and Erie Canal be amended to read as follows:

[*Senate Journal, Forty-fifth Session, 838.*]

The General Assembly of the State of Indiana shall never incur any debt or liability, or recognize any claim whatever growing out of or connected with the Wabash and Erie Canal, or matters pertaining thereto, except as provided in an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," approved January 19th, 1846, and the act supplemental thereto, approved January 27th, 1847, and said acts shall never be construed so as in any manner to create any liability or legal obligation on the part of said State, but this section shall in no wise be construed as affecting the rights of persons holding the obligations of the State, and who were not parties to the adjustment of the debt of this State as made in the acts herein referred to.

That the third section relative to annual sessions of the General Assembly be adopted; that the fourth section relative to unlimited sessions and the compensation of members should be amended to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the sessions at which such increase may be made. No session of the General Assembly shall be limited by law, but the members thereof shall receive no compensation for their services after the first sixty-one days of the annual session shall have expired; and the first forty days of the special session shall have expired.

The third section relative to annual sessions of the General Assembly was amended on the floor of the Senate to read as follows:

The sessions of the General Assembly shall be held annually at the capital of the State, commencing on the Thursday next after the first Monday of January after this amendment has been ratified as provided for in the Constitution; and on the same day of each year thereafter, unless a different day or place shall be appointed by law. But if in the opinion of the Governor the public welfare require it, he may at any time, by proclamation, call a special session.

An unsuccessful attempt was made to exclude townships from the provision relative to the raising of supplemental tax levies. An attempt to

lay the resolution on the table failed by a vote of 15-26. The report of the committee as amended was agreed to by a vote of 30-13, and the resolution was adopted by a vote of 26-15. The resolution was not taken up by the House until March 11. The proposition enabling towns and townships to levy additional taxes was adopted by a vote of 54-14. The second proposition relative to the Wabash and Erie Canal was lost for want of a constitutional majority, the vote being 47-21. The House then refused, without vote, to concur in the resolution.

#### 249. Supplementary School Revenue (January 15, 1867).

Even before the foregoing Senate resolution was considered, on January 15, Mr. Smith of Lagrange, a Republican, introduced a resolution in the House relative to the creation of supplementary school revenue, which was referred to the Judiciary Committee. On January 25, the committee reported that it was inexpedient to pass the resolution as a similar resolution had passed the General Assembly on March 6, 1865, and the report was concurred in.

[*House Journal, Forty-fifth Session, 76.*]

Joint resolution No. 5. A joint resolution proposing an amendment to Article 8 of the Constitution, so as to enable townships to levy taxes for the support of common schools.

#### 250. Supplementary School Revenue (January 30, 1867).

On January 30, Mr. William E. McLean, a Republican, introduced the following resolution, which was referred to the Committee on Education.

[*House Journal, Forty-fifth Session, 265.*]

WHEREAS, The legislature of Indiana, at its forty-third regular session, passed joint resolution No. 2, entitled "A joint resolution proposing an amendment to article eight of the constitution, so as to enable cities and towns to levy taxes for the support of common schools," approved March 6, 1865, which joint resolution provided as follows: "*Be it resolved by the General Assembly of the State of Indiana, That the following amendment be proposed to the Constitution of the State, and be agreed to and submitted to the electors for their adoption or rejection: Provided, The same is agreed to by a majority of all the members elected to the General Assembly, chosen at the next general election. That there be added to article eight of the Constitution the following section: 'Incorporated cities and towns shall have power, by taxation, under regulations prescribed by the General Assembly, to raise revenue for the support of common schools in addition to the revenue derived for that purpose from the State;'*" therefore,

*Be it resolved, That the said joint resolution be agreed to by the members of this General Assembly, and that the same be sub-*

mitted to the electors at the State election to be held in October next, as an amendment to the State Constitution.

On February 2, the committee recommended the adoption of this resolution. On February 12, the resolution was recommitted to the Committee on Education with instructions to amend by providing that the Secretary of State be directed to give the proper notice of the proposed amendment and the manner of voting. An attempt was made to lay the resolution on the table, but was lost by a vote of 31-49. Apparently, there was no further action.

### **251. Defining a Legislative Quorum (January 10, 1867).**

On January 10, Mr. Michael F. Shuey, a Republican, introduced a resolution in the House providing for a constitutional amendment defining a legislative quorum. On January 11, the resolution was submitted to a special committee of five. Subsequently, this resolution was submitted to the Judiciary Committee who reported adversely on January 25 for the reason "that an amendment approved March 6, 1865, is still pending." On January 29, the resolution was indefinitely postponed.

*[House Journal, Forty-fifth Session, 15.]*

Joint resolution No. 3. A joint resolution proposing an amendment to the ninth section of the third article of the Constitution of the State.

### **252. Democratic Platform of 1868—Negro Suffrage (January 8, 1868).**

The Democrats of Indiana, gathered in convention on January 8, 1868, adopted the following resolution relative to negro suffrage which the reconstruction policy of the Republicans was rendering inevitable.

*[Indianapolis Journal, January 9, 1868.]*

That we are opposed to conferring the right of suffrage on negroes. We deny the right of the general government to interfere with the question of suffrage in any of the States of the Union.

### **THE FORTY-SIXTH GENERAL ASSEMBLY (1869).**

The Forty-sixth General Assembly was predominantly Republican. Fewer constitutional measures were considered at this session than at any session since 1855. One of the reasons for the inactivity of the legislature on constitutional measures was the fact that a solution of the school question had been arrived at. As has been shown above, an act was passed in 1852 enabling local school corporations to levy supplementary school taxes. This law was declared unconstitutional in 1854 and had produced a wide spread demand for a constitutional amendment to correct this difficulty. As none had been obtained, the General Assembly, on March 9, 1867, passed another measure which was substantially identical with the law of 1852, and which

authorized the trustees of civil townships and incorporated towns and the common councils of cities to levy annually a tax not exceeding 25 cents on each \$100 of taxable property and 25 cents on each taxable poll, to be used for common school purposes. In 1869, the constitutionality of this measure had not been tested, and in every locality where the tax had been levied "the people seem to have acquiesced in the law under which it was imposed as a constitutional exercise of the taxing power." In his message to the General Assembly on January 8, Governor Baker said that "if this acquiescence shall continue," or if the constitutionality of the measure should be sustained, "the interests of common school education will probably be better subserved by the aid thus given than by an increase of the State tax for school purposes." The Governor also made a second recommendation of constitutional importance. He reminded the legislature that the aggregate canal debt which the State might conceivably assume was upwards of \$15,000,000; that in 1857 a joint resolution had been adopted declaring that the General Assembly had no constitutional power to purchase the Wabash and Erie Canal, and that if it had such power it would be "impolitic, unwise and injurious to the best interests of the people of the State . . . "; that at the session of 1867 a constitutional amendment covering this question had been proposed and passed by the Senate but not acted upon by the House. He now respectfully recommended that the substance of the joint resolution of 1857 "be re-adopted at the present session." The only two constitutional propositions which were considered were the Wabash and Erie Canal amendment and the question relative to the method of amending statutes.

### 253. Wabash and Erie Canal (February 8, 1869).

On February 8, the following resolution relative to the Wabash and Erie Canal was introduced in the Senate and referred to the Judiciary Committee.

*[Senate Journal, Forty-sixth Session, 335.]*

*Be it resolved by the Senate of the State of Indiana, the House of Representatives concurring, That the following amendment be proposed to the Constitution of the State of Indiana.*

#### AMENDMENT TO THE CONSTITUTION.

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled an act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville, passed January 19th, 1846,\* and an act supplemental to said act, passed January 19th, 1847, which, by the provisions of the said acts or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls

\*((As initially indicated on p. 81, these acts were approved by the Governor on January 19, 1846, and January 27, 1847, respectively. Documents which follow on the canal amendment generally contain inaccurate dates for these acts.))



and revenues of the canal in said acts mentioned, and no such certificate or stock shall ever be paid by this State.

On February 18, the committee presented a favorable report which was concurred in. On February 23, an attempt to indefinitely postpone the consideration of the amendment was lost by a vote of 16-18. By a vote of 19-15, the resolution was referred to the Judiciary Committee and there was apparently no further action.

#### **254. Wabash and Erie Canal (February 23, 1869).**

On February 23, Mr. John Greene, a Republican, introduced a resolution in the Senate declaring it both unconstitutional and impolitic to purchase the Wabash and Erie Canal. This resolution was referred to the Judiciary Committee who returned a favorable report on March 1, but apparently nothing further was done.

*[Senate Journal, Forty-sixth Session, 519.]*

Joint resolution No. 14. Declaring it unconstitutional and impolitic for the General Assembly to purchase the Wabash and Erie Canal, or to acknowledge any liability on the part of the State on account of the debt charged upon said canal.

#### **255. Method of Amending Acts (March 1, 1869).**

In *Langdon v. Applegate*, 5 Ind. 327, the Supreme Court held that in amending acts, both the act amended and the act as revised must be set forth. This construction rendered scores of laws unconstitutional because the method employed was irregular. At the November term, 1867, in *Greencastle Turnpike Co. v. State*, 28 Ind. 382, this decision was reversed, with the result that the General Assembly was seriously perturbed as to the proper method to be employed. Accordingly, on March 1, the following resolution was proposed and adopted but apparently not acted upon further.

*[Senate Journal, Forty-sixth Session, 610.]*

*Resolved*, That the Judiciary Committee are hereby instructed to inquire in what condition the decision of the Supreme Court, in the case of *Greencastle v. State*, reported in 28th Indiana, overruling the decision in the case of *Langdon v. Applegate*, in 5th Indiana, leaves the statutes on the subject of descents, and the settlement of decedent's estates, and what legislation, if any, is needed in reference thereto.

#### **256. Republican Platform of 1870—Wabash and Erie Canal (February 22, 1870).**

At its convention assembled in Indianapolis on February 22, 1870, the Republican Party adopted the following resolution relative to the Wabash and Erie Canal bonds.



[*Indianapolis Journal*, February 23, 1870.]

That the canal stocks, issued under the legislation of 1846 and 1847, commonly called the "Butler Bill," were, by the terms of the contract, charged exclusively upon the Wabash and Erie Canal, its revenues and lands; and the faith of the State never having been directly or indirectly pledged for the payment or redemption thereof, said canal stocks therefore constitute no part of the outstanding debts or liabilities of the State. That the Constitution of this State ought to be amended at the earliest practicable period, so as to prohibit the taking effect of any law or acts of the General Assembly proposing to recognize or create any liability of the State for the said canal stock, or any part thereof, until such proposition shall have been submitted to a direct vote of the people of the State and approved by them.

#### THE SPECIAL SESSION OF THE GENERAL ASSEMBLY (April 8 to May 17, 1869).

The calling of the special session of 1869 was rendered necessary by reason of the fact that the General Assembly at its regular session had failed to pass the necessary appropriations to carry on the State government. The personnel was the same as that at the regular session. No constitutional measures were proposed for consideration in either house.

#### THE FORTY-SEVENTH GENERAL ASSEMBLY, (1871)

At the Forty-seventh session of 1871, the Democrats had returned to power. The Senate consisted of 26 Democrats and 24 Republicans and the House of 53 Democrats and 47 Republicans. The chief attention of the General Assembly at this session was devoted to perfecting an amendment by which the State would be prohibited from assuming the indebtedness of the Wabash and Erie Canal. Attempts were also made to provide for the calling of the constitutional convention, to authorize the General Assembly to prescribe maximum freight and passenger rates on the railroads and to confer the right of suffrage on women. The Wabash and Erie Canal amendment passed both houses by overwhelming majorities.

#### 257. The Wabash and Erie Canal—Governor Baker's Recommendation (January 6, 1871).

In his message delivered to the two houses of the General Assembly on January 6, 1871, Governor Baker devoted fully one-third of his message to a discussion of the canal question. He informed the General Assembly that a renewed attempt was to be made by the holders of the Wabash and Erie stocks "to induce the General Assembly to charge the payment thereof on the treasury of the State." In 1857, it was rumored that such an attempt would be made. To anticipate the accomplishment of this object, the

General Assembly passed the joint resolution, approved February 19, 1857, which condemned in advance "an expected effort to have the canal debt charged by legislative action on the State treasury." In March, 1857, a few days before the adjournment of the legislature, the canal stock holders transmitted a memorial through the Governor to the General Assembly in which the attempt was made to show that "the State by her own acts had rendered herself liable for the payment of said stocks." A new edition of this pamphlet had been brought out and a copy was sent to every member of the present legislature. The "press of New York and London have been used to give currency to the imputation that Indiana, in refusing to charge these canal stocks upon her treasury, is guilty of repudiation," and it therefore seemed proper "that the public should be informed through some official channel, of the views entertained by our people, together with the grounds upon which they are based." The Governor ended by recommending the adoption of a constitutional amendment expressly disclaiming any part of the Wabash and Erie Canal debt.

[*Senate Journal, Forty-seventh Session, 43.*]

I earnestly recommend the passage of a joint resolution proposing an amendment to the Constitution, so as to declare, that no act of legislation shall ever take effect, or become a law of this State, whereby said canal stocks, or any part thereof, shall be recognized as a debt of the State, or charged upon the treasury thereof, by way of redeeming said canal or otherwise, until such act of legislation shall have been submitted to, and ratified by, the qualified electors of this State, at a special election to be held for that purpose, in pursuance of law, a majority of the votes cast at such election to be necessary to effect the ratification.

## 258. Wabash and Erie Canal Amendment (January 6, 1871).

On January 6, Mr. John Caven, a Republican, introduced a resolution to carry out the Governor's recommendation, prohibiting the General Assembly from assuming any liability incurred by the Wabash and Erie Canal. After a prolonged discussion, the resolution was adopted by the Senate on January 18, by a vote of 45-1. After its presentation in the House, the resolution was made a special order for January 24. On that day the House committee which had been considering all constitutional propositions recommended the adoption of the Senate resolution, which thereupon was adopted by a vote of 93-0, seven members being absent.

[*Laws, Forty-seventh Session, 67.*]

Joint resolution No. 1. A *joint resolution*, proposing an amendment to the Constitution, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

Joint resolution No. 1. A joint resolution, proposing an amendment to the Constitution, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and hereby is, proposed to the Constitution of this State, and that the same be, and is hereby agreed to and submitted to the electors of the State for their ratification or rejection: *Provided,* The same shall be agreed to by a majority of all the members elected to each house of the General Assembly of this State, to be chosen at the next general election. Said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19th, 1846, and an act supplemental to said act, passed January 29th, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State.

*Resolved further,* That the foregoing joint resolution be, and the same is hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-two.

**259. Wabash and Erie Canal—Bonds Issued Prior to 1841 (January 19, 1871).**

A concurrent resolution adopted by the Senate and apparently designed to accompany the foregoing proposed constitutional amendment, and to dispose of the old State bonds issued prior to 1841, and as a reply to the elaborate memorial presented by the bond holders, was rejected by the House.

[*House Journal, Forty-seventh Session, 270.*]

*Be it resolved by the Senate (the House of Representatives concurring),* That it is inexpedient to take any legislative action on the subject of the resumption by the State of the Wabash and Erie Canal, excepting for the purpose of submitting the matter

in some appropriate form to the people of the State, and to protect the canal from sale, and its revenues from sequestration.

*Resolved by the Senate (the House of Representatives concurring),* That this General Assembly of the State of Indiana will make provision for the payment of the principal and interest of the old bonds of the State, issued prior to the year 1841, and not surrendered under legislation of 1846 and 1847, known as the "Butler Bills." In which the concurrence of the House is requested.

**260. Wabash and Erie Canal—Constitutional Amendment (January 5, 1871).**

On January 5, Mr. Willis G. Neff, a Democrat, introduced the following resolution in the House, which was finally superseded by the foregoing measure.

*[House Journal, Forty-seventh Session, 14.]*

WHEREAS, by an act of the legislature of the State of Indiana, approved January 19, 1846, and entitled "An act to provide for the 'Funded Debt' of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville, and an act supplemental thereto, passed January 27, 1847, the said State of Indiana conveyed the Wabash and Erie Canal (including eight hundred thousand acres of land) in trust for the bond holders, and whereas said arrangement was made at the instance of the creditors of said State, and was recognized as an equitable and just settlement between said State and the holders of certificates of stock, or bonds of the Wabash and Erie Canal issued by said State; therefore,

*Be it enacted by the Legislature of the State of Indiana,* That the following amendment shall become a part of the Constitution of the State of Indiana when the same shall be agreed to by a majority of the members elected to each of the two houses of the present legislature, and the said amendment shall be entered on the Journals of each house of the present legislature, and the same is hereby referred to the General Assembly of the State of Indiana to be elected at the next general election, to-wit:

**AMENDMENT.**

That the legislature of the State of Indiana, is forever prohibited from purchasing or taking back the Wabash and Erie Canal, and said legislature is prohibited forever from paying or assuming the payment or issuing bonds in lieu of the bonds, or



certificates of stock issued by the State of Indiana, mentioned in the above recited acts, and any acts of the said legislature which shall be passed authorizing the payment of said bonds, or funding the same or in any way recognizing them as valid indebtedness of said State, shall be null and void.

**261. Wabash and Erie Canal—Constitutional Amendment (January 16, 1871).**

On January 16, Mr. Jason B. Brown introduced a resolution in the Senate proposing certain unspecified amendments to the Constitution. From the connection in which this measure was subsequently treated it is reasonably clear that the resolution refers to the Wabash and Erie Canal.

*[Senate Journal, Forty-seventh Session, 160.]*

Joint resolution No. 4. Proposing an amendment to the Constitution of Indiana.

**262. Railroad Rates and Discrimination (January 17, 1871).**

By the beginning of the year 1871, the railroad problem in this State had assumed large proportions. Railroad building had been pursued with considerable diligence for upward of 40 years. The first railroad charters granted were issued in 1832. The first actual construction work was done in 1834. On October 1, 1847, the first train reached Indianapolis. The State was at first a partner in these enterprises but retired from the contract about 1852. In 1850, there were 212 miles of railroad in successful operation in the State and upwards of 1,000 miles more had been surveyed. The construction of railroads led to the passage of a considerable body of legislation designed to regulate and control these new agencies of transportation and within a comparatively short time after the inauguration of the new transportation system charges of excessive fares, extortionate rates and discrimination in service were made by shippers and patrons of the railroads generally. The agrarian agitation, stimulated by alleged unfairness, was reflected in many ways in the legislation of Indiana, but the problem had not become so acute as to lead to a demand for constitutional changes until the year 1871. On January 17, Mr. John W. Wymer, a Republican, introduced a resolution in the House which proposed to so amend the Constitution as to authorize the legislature to prescribe reasonable maximum freight and passenger rates and to prohibit discriminations between competing lines. The resolution was referred to the Judiciary Committee, from which it never emerged.

*[House Journal, Forty-seventh Session, 196.]*

House joint resolution No. 6. Joint resolution proposing an amendment to the Constitution of the State of Indiana.

*Be it resolved by the Senate and House of Representatives of the State of Indiana (a majority of both houses concurring), That the*



following article be proposed as an amendment to the Constitution of said State, which upon being agreed to by a majority of all the members elected to the next General Assembly of said State, and ratified by a majority of the electors of said State, shall become a part of said Constitution, and assigned to Article 15.

Section 2. The legislature may from time to time, pass laws establishing reasonable maximum rates for the transportation of passengers and freights on the different railroads in the State of Indiana, and shall prohibit running contracts between such railroad companies, whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroads.

**263. Woman Suffrage—Resolution of Inquiry (January 20, 1871).**

The question of woman suffrage was receiving considerable attention at this time and the accompanying resolution was the second proposal which had been made to so amend the Constitution as to remove all legal and political disabilities of women. On January 10, a petition signed by citizens of Jay county was presented in the Senate asking that the Constitution be so amended "as to remove all legal and political disabilities of women," and on January 16, a similar petition signed by sundry citizens of the State was presented. Meantime the Woman's State Suffrage Association had asked leave of the General Assembly to formally present a petition in favor of woman suffrage, and this permission was granted by a concurrent resolution adopted by both houses. Accordingly, on January 20, the Senate proceeded to the House chamber, and upon invitation of the Lieutenant-Governor, Miss Amanda Way, who had the memorial in charge, came forward and formally presented it. Immediately after the adjournment of this joint meeting, Mr. Othniel Beeson presented a resolution in the Senate providing for the submission of the woman suffrage question to the women themselves, which was adopted by a vote of 38-3.

*[Senate Journal, Forty-seventh Session, 235.]*

*Resolved*, That the Committee on the Rights and Privileges of the Inhabitants of the State, are requested to report at an early day upon the power and propriety of the legislature submitting by law the question of female suffrage to a vote of the women of the State, and the passage of an amendment to the Constitution giving such right of suffrage, when approved by a majority of the women voting at such election.

**264. Majority Senate Committee Report on Woman Suffrage (February 14, 1871).**

On February 14, the select committee brought in a divided report;

the majority report described the proposal as "undesirable" and "inexpedient," and was presented by Mr. Benoni S. Fuller.

[*Senate Journal, Forty-seventh Session, 603.*]

A majority of your select committee, to whom was referred sundry petitions and resolutions relating to the submission of the question of female suffrage to the voters of the State, with a view of so amending the Constitution of the State as to permit women to vote, have duly considered the same, and a majority of said committee respectfully report that they regard the submission of said question as undesirable by the people and inexpedient at this time.

**265. Minority Senate Committee Report on Woman Suffrage (February 14, 1871).**

The minority of the committee, consisting of Mr. Othniel Beeson and Mr. Robert Dwiggins, brought in a favorable report and a joint resolution, which provided for the submission of the proposition to the electors of the State and not to the women themselves.

[*Senate Journal, Forty-seventh Session, 603.*]

The undersigned, a minority of the select committee on woman's rights, in compliance with the terms of Senate resolution No. 38, passed January 20, 1871, beg leave to submit the following proposed amendment to the Constitution of the State:

OTHNIEL BEESON,  
R. S. DWIGGINS.

A joint resolution, proposing an amendment to the Constitution, by adding to the second article, a section conferring on women of the age of twenty-one years and upwards, the right to vote.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and is hereby proposed to the Constitution of this State, and that the same be and is hereby agreed to and submitted to the electors of the State for their ratification or rejection: *Provided,* The same shall be agreed to by a majority of all the members composing each house of the next regular General Assembly of this State, said amendment to consist of the addition of the following sections to the second article of the Constitution, in the language following, viz.:

In all elections provided for by this Constitution, every female citizen of the United States, of the age of twenty-one years and

upwards, who shall have resided in the State during the six months immediately preceding said election; and every female of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared her intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where she may reside.

On February 15, the resolution was under consideration as a special order. By a vote of 25-22, the word "white" was inserted immediately preceding the word "female" wherever it occurs. The minority report, in favor of the proposed amendment, was then rejected by a vote of 20-27, and the majority report was rejected by a vote of 20-28.

#### **266. Calling a Constitutional Convention (January 18, 1871).**

On January 18, Mr. Calkins of Porter, a Republican, introduced a bill in the House providing for calling a constitutional convention. The bill was referred to the Committee on Rights and Privileges. On January 23, the House determined to resolve itself into a committee of the whole on January 25 to consider this bill. On February 7, the bill was indefinitely postponed.

[*House Journal, Forty-seventh Session, 219.*]

House bill No. 103. A bill to provide for taking the sense of the qualified voters of this State on the calling of a convention to alter, amend or revise the Constitution of this State, and providing for notice thereof.

#### **267. Republican Platform of 1872—Wabash and Erie Canal (February 22, 1872).**

The Republican Party, assembled in convention in Indianapolis on February 22, 1872, adopted the following resolution relative to the pending amendment concerning the bonds of the Wabash and Erie Canal. (See Document No. 258.)

[*Indianapolis Journal, February 23, 1872.*]

That the joint resolution passed by the last General Assembly proposing to amend the Constitution so as to prohibit the legislature from ever assuming or paying the canal debt which was charged exclusively upon the Wabash and Erie Canal under the legislation of 1846 and 1847, commonly called the Butler Bill, ought to be adopted by the next General Assembly, and submitted to the people, to the end that it may be ratified and become a part of the Constitution.

## THE SPECIAL SESSION OF 1872 (November 13 to December 22).

The General Assembly which convened in special session on November 31, 1872, consisted of 26 Republicans and 24 Democrats and Liberal Republicans in the Senate, and 54 Republicans and 46 Democrats and Liberal Republicans in the House. The convention of the General Assembly was necessitated by the fact that there was a large amount of unfinished business left over from the preceding session. The last three sessions had in fact been "prematurely and abruptly terminated by the resignation of members, and by reason thereof much important and necessary legislation failed to be enacted . . ." At the last session, on February 23, thirty-four members of the House had resigned, thus abridging the session by more than a week. In his message of November 14, Governor Baker indirectly condemned the constitutional limitation on legislative sessions as follows: "The growth of the State in population and wealth and the consequent increased diversity and importance of the subjects and interests requiring legislative supervision and protection, render it impracticable for the General Assembly to transact all the business demanding its attention during its regular biennial sessions (limited as these are by the Constitution to the term of sixty-one days each), even when nothing extraordinary occurs to impede and prevent legislation." The General Assembly which convened in special session in 1872 was a different body from that which met in 1871 and hence was competent to act on the Wabash and Erie Canal amendment which had been adopted at the last regular session. Two other propositions were also taken up, providing for calling a constitutional convention and changing the time of holding general elections. The only measure adopted was the Wabash and Erie Canal amendment.

## 268. Wabash and Erie Canal Amendment—Legal Adoption (November 14, 1872).

Some doubt had arisen as to whether the proposed Wabash and Erie Canal amendment had been legally adopted. On this subject, the Governor in his message on November 14, expressed the conviction that the amendment was not vitiated by the "omission to spread the amendment at large on the journals . . . ."

[*Senate Journal, Special Session, 1872, 17.*]

. . . . The fact was brought to my notice some time since that the printed journals of the Senate and House of Representatives of the last General Assembly do not show that the proposed amendment, with the yeas and nays thereon, was entered on the journal of either House, and consequently, doubt has been expressed as to the validity of the proceedings connected with its adoption.

The Constitution provides that amendments may be proposed in either branch of the General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the



two Houses, such proposed amendment or amendments, shall, with the yeas and nays thereon, be entered on their journals and referred to the General Assembly to be chosen at the next general election, and if in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors, etc. An inspection of the printed journals will show that the yeas and nays were called and recorded on the passage of the joint resolution in both Houses; that it passed the Senate by a vote of forty-five yeas to one nay; that it passed the House by a unanimous vote, ninety-three members voting for, and none against it. The joint resolution was duly enrolled, signed by the President of the Senate and the Speaker of the House of Representatives, and is deposited in the office of the Secretary of State, and was printed and published with the laws passed at the same session. Under these circumstances, I am clear in the opinion that the omission to spread the amendment at large on the journals does not vitiate it. The provision which says that the amendment shall be entered on the journals, if indeed it means that it shall be copied at full length, is, at the most, only directory and not mandatory, and consequently the amendment, if passed by the present General Assembly and ratified by the people, will be valid as a part of the Constitution.

In this connection, I desire to call attention to the fact that the original manuscript journals of the Senate and House of Representatives are not preserved, but are sent to the public printer and used as copy from which to print and then destroyed. The journals are printed after the adjournment of the General Assembly under the supervision of the secretary of the Senate and the clerk of the House respectively, and as the original manuscript is destroyed after the proof is read, there is no possible means of detecting or correcting any omission or mistake which might be made in the printed volume. I respectfully suggest that this practice ought to be discontinued and that the original manuscript journals should be bound in permanent form and preserved in the office of the Secretary of State and copies thereof furnished to the printer.

**269. Governor Baker Recommends Adoption of Wabash and Erie Canal Amendment (November 14, 1872).**

Assuming then, that the proposed amendment had been legally adopted by the regular Assembly of 1871, the Governor in his message on November



14, recommended the completion of the process by which the amendment might be submitted to the people.

[*Senate Journal, Special Session, 1872, 17.*]

. . . . . I earnestly recommend that the amendment, the substance of which I have just stated, be promptly agreed to and adopted by the present General Assembly at this session, and that the provision be made by law for its speedy submission to the people for ratification. Having heretofore so fully discussed the questions involved in the proposed amendment, I do not deem it expedient or necessary now to reiterate my opinions or the arguments urged in support of them, but content myself by saying, that the views expressed in my last regular message on the subject of the canal debt, and the necessity and propriety of such an amendment to the Constitution, remain unchanged. To the end that these views may be conveniently accessible to all of you, I will cause a pamphlet copy of the message alluded to, to be addressed and delivered to every member of this General Assembly.

#### 270. The Wabash and Erie Canal Amendment (January 23, 1873).

The joint resolution embodying the proposed canal amendment was introduced in the House on November 14, by Mr. Nathan Kimball, a Republican, and was put upon its passage at once and adopted by a vote of 97-0.

[*House Journal, Special Session, 1872, 52.*]

Joint resolution No. 2. A joint resolution agreeing to and adopting an amendment proposed to the Constitution, by the last General Assembly, by adding to the tenth article, a section in relation to the debt charged upon the Wabash and Erie Canal.

WHEREAS, The last General Assembly at the regular session thereof, passed, adopted and agreed to the following joint resolution, to wit:

“A joint resolution proposing an amendment to the Constitution, by adding to the tenth article, a section in relation to the debt charged upon the Wabash and Erie Canal.”

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and is hereby proposed to the Constitution of this State, and that the same be, and is hereby agreed to and submitted to the electors of the State, for their ratification or rejection: *Provided,* The same shall be agreed to

by a majority of all the members elected to each House of the General Assembly of this State, to be chosen at the next general election.

Said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock, issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1847, and an act supplemental to said act, passed, January 29, 1849,<sup>1</sup> which by the provision of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State."

*Resolved, further,* That the foregoing joint resolution be, and the same is hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord, one thousand eight hundred and seventy-two. Now,

*Be it resolved by the General Assembly of the State of Indiana,* That the said amendment proposed to the Constitution of Indiana, contained in said joint resolution passed by the last General Assembly, as aforesaid, and herein before recited, be, and the same hereby is agreed to and adopted by this General Assembly, and that the said amendments shall be submitted to the electors of the State, for ratification, at an election to be called for that purpose, in pursuance of such an act of the General Assembly as may hereafter be passed providing for such submission; and if no time is designated by this General Assembly, there shall be submitted to the people at the next general election, to be held on the second Tuesday in October, eighteen hundred and seventy-four.

This resolution was reported to the Senate on November 18, and referred to the Judiciary Committee. On December 3, the committee reported back the resolution and recommended its passage. On December 9, the resolution passed the Senate by a vote of 34-0.

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1. Obviously, these dates should be January 19, 1846, and January 29, 1847, respectively. ((See \* at bottom of p. 86.))

[*Laws, Special Session, 1872, 187.*]

House joint resolution No. 2 agreeing to and adopting an amendment proposed to the Constitution by the last General Assembly, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

WHEREAS, The last General Assembly, at the regular session thereof, passed, adopted and agreed to the following joint resolution, to wit:

“A Joint Resolution, proposing an amendment to the Constitution by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be and hereby is proposed to the Constitution of this State, and that the same be and is hereby agreed to and submitted to the electors of the State for their ratification or rejection: *Provided,* The same shall be agreed to by a majority of all the members elected to each house of the General Assembly of this State to be chosen at the next general election; said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville, passed January 19th, 1846, and an act supplemental to said act, passed January 29th, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificates of stocks shall ever be paid by this State.

*Resolved further,* That the foregoing joint resolution be, and the same is hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-two,” now therefore,

*Be it resolved by the General Assembly of the State of Indiana,* That the said amendment proposed to the Constitution of Indiana, contained in said joint resolution, passed by the last General Assembly, as aforesaid, and hereinbefore recited, be, and the same hereby is, agreed to and adopted by this General Assembly,

and that the said amendment shall be submitted to the electors of the State for ratification at an election to be called for that purpose in pursuance of such an act of the General Assembly as may hereafter be passed providing for such submission; and if no time is designated by this General Assembly, then shall be submitted to the people at the next general election to be held on the second Tuesday in October, eighteen hundred and seventy-four.

**271. Governor Baker's Recommendation Relative to Submission of Wabash and Erie Canal Amendment to Electors (January 10, 1873).**

On December 14, after the joint resolution had been formally adopted by both Houses, Mr. Robert S. Dwiggin, a Republican, introduced a bill in the Senate providing for the submission of the Canal amendment to the electors. The bill was adopted in the Senate the same day by a vote of 37-1. The bill was reported to the House on December 16 and was read a first time on December 18, and a second time on December 20. The bill then laid over until the beginning of the regular session. This bill was still pending in the House when the regular session of the forty-eighth General Assembly convened. Accordingly, in his message of January 10, Governor Baker, by an indirect reference to the status of the proposed legislation, urged that the measure be matured.

*[House Journal, Forty-eighth Session, 25.]*

The proposed amendment to the Constitution of the State, inhibiting the General Assembly from ever recognizing or assuming the Wabash and Erie Canal debt as a charge upon the treasury of the State, having passed two successive General Assemblies, is now in a condition to be submitted to the people for ratification whenever provision shall be made by law for such submission.

**272. Submission of the Wabash and Erie Canal Amendment to Electors (January 28, 1873).**

A week later, on January 16, the bill was taken up and referred to the Judiciary Committee. On January 21, the Judiciary Committee submitted its report; they recommended that the election should be held on February 18 instead of January 28 as was originally provided. The report was concurred in, the amendment adopted and the bill passed by a vote of 86-0.

*[Laws, Forty-eighth Session, 83.]*

AN ACT to provide for the submission to the qualified electors of this State for their ratification or rejection, a proposed amendment to the Constitution of Indiana, therein mentioned, and declaring an emergency.

WHEREAS, *The General Assembly of the State of Indiana*. Elected at the general election, held on the second Tuesday of October,



A. D. 1870, did, at the regular session thereof, (which session was begun on the 5th day of January, 1871,) agree to pass and adopt a joint resolution in the words and figures following, to-wit:

A joint resolution, proposing an amendment to the Constitution by adding to the tenth article, a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and hereby is proposed to the Constitution of this State, and that the same be, and is hereby agreed to and submitted to the electors of the State for their ratification or rejection: *Provided,* The same be agreed to by a majority of all the members elected to each House of the General Assembly of this State, to be chosen at the next general election, said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stocks issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19th, 1846; and an act supplemental to said act, passed January 29th, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal, in said acts mentioned, and no such certificate or stock shall ever be paid by this State.

*Resolved further,* That the foregoing joint resolution be, and the same is hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight (hundred) and seventy-two, and

WHEREAS, The General Assembly of this State which was elected at the general election held on the second Tuesday in October, in the year A. D. 1872, and which convened in special session on the 13th day of November of said year, did also at said special session pass, adopt and agree to a joint resolution in the words and figures following, to-wit:

A joint resolution agreeing to and adopting an amendment proposed to the Constitution by the last General Assembly, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.



WHEREAS, The last General Assembly, at the regular session thereof, passed, adopted, and agreed to the following joint resolution, to-wit:

“A joint resolution, proposing an amendment to the Constitution, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and hereby is, proposed to the Constitution of this State, and that the same be and is hereby agreed to and submitted to the electors of the State for their ratification or rejection: *Provided,* The same shall be agreed to by a majority of all the members elected to each house of the General Assembly of this State, to be chosen at the next general election. Said amendment to consist of the addition of the following section to the tenth article of the Constitution in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled ‘An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville,’ passed January 19th, 1846; and an act supplemental to said act, passed January 29th, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificates or stocks shall ever be paid by this State.

*Resolved further,* That the foregoing joint resolution be, and the same is, hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-two. Now therefore,

*Be it resolved by the General Assembly of the State of Indiana,* That the said amendment proposed to the Constitution of Indiana, contained in the said joint resolution, passed by the last General Assembly, as aforesaid and hereinbefore recited, be, and the same hereby is, agreed to and adopted by this General Assembly, and that the said amendment shall be submitted to the electors of the State for ratification, at an election to be called for that purpose in pursuance of such act of the General Assembly as may hereafter be passed, providing for such submission; and if no time is designated by this General Assembly, then shall be submitted

to the people at the next general election, to be held on the second Tuesday in October, eighteen hundred and seventy-four."

Now, therefore, for the purpose of submitting the said amendment recited in both of said joint resolutions, to the qualified electors of this State for their ratification or rejection;

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That an election is hereby called and directed to be held in the several counties of this State, and at the several precincts or places of holding elections in said counties respectively, for the purpose of submitting to the qualified electors of this State for their ratification or rejection, the following proposed amendment to the Constitution of the State of Indiana, to consist of an addition of the following section to the tenth article of said Constitution in the language following, that is to say:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19th, 1846, and an act supplemental to said act, passed January 29th, 1847, which, by the provisions of said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate of stocks shall ever be paid by this State.

Sec. 2. The said election shall be held on the 18th day of February, in the year of our Lord one thousand eight hundred and seventy-three; and the qualified voters voting at said election who may favor the adoption of the said amendment as a part of the Constitution of this State, shall use ballots having written or printed thereon the words "For the proposed amendment to the Constitution," and those who are opposed to the adoption of said amendment as a part of the Constitution, shall use ballots having the words written or printed thereon, "Against the proposed amendment to the Constitution."

Sec. 3. The said election shall be held between the same hours between which general elections are now by law required to be held, and shall be conducted by the same officers now provided by law for the conducting of general elections, and all the rules and regulations now prescribed by law in relation to general elections, shall be applied so far as practicable, to the election provided for in this act.

Sec. 4. The votes given at said election shall be counted, returned, canvassed and certified by the clerks of the Circuit courts of the several counties, to the Secretary of State, at, or within the time that votes given for members of the General Assembly are now by law required to be counted, canvassed and certified.

Sec. 5. As soon as certificates of the result of such election shall have been received by the Secretary of State from the clerks of the circuit courts of all the counties in the State, it shall be the duty of the Governor and Secretary of State, to examine said certificates and declare the result of said election; and if it shall appear from said examination that a majority of all the votes cast at said election were in favor of the adoption of said proposed amendment, then, and thereupon, the said amendment shall be and become a part and parcel of the Constitution of the State of Indiana, and the Governor of this State shall, as soon as practicable, issue his proclamation, embodying the said amendment therein, and declaring and proclaiming that the same has been duly ratified by the people, and is therefore a part of the Constitution of the State.

Sec. 6. It is hereby declared that an emergency exists for the immediate taking effect of this act, and it shall therefore take effect and be in force from and after its passage.

Approved January 28, 1873.

### 273. Wabash and Erie Canal Amendment (November 13, 1872).

On November 13, Mr. Shirley of Morgan and Johnson, a Liberal, introduced the following resolution which was referred to a committee of one from each congressional district but never matured as the same propositions were already adequately covered.

[*House Journal, Special Session, 1872, 16.*]

Joint resolution No. 1 proposing an amendment to the Constitution by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and hereby is proposed to the Constitution of the State, and that the same be, and is hereby agreed to, and submitted to the electors of the State for their ratification or rejection: *Provided,* The same shall be agreed to by a majority of all the members elected to each house of the General Assembly of this State, to be chosen at the next general

election. Said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act passed January 29, 1847, which by provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State.

*Resolved further*, That the foregoing joint resolution be, and the same is hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord, one thousand eight hundred and seventy-four.

WHEREAS, The foregoing joint resolution was passed by the General Assembly of the State of Indiana, at its last preceding session, begun in January, 1871.

*Be it therefore resolved, by the General Assembly of the State of Indiana*, at its present session, that said proposed amendment to the Constitution of the State of Indiana be, and the same is hereby agreed to, and that said proposed amendment to the Constitution of the State of Indiana, be submitted to the electors of the State of Indiana, for their ratification or rejection, at the next general election, to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-four.

#### 274. Notifying the Electors (January 31, 1873).

On January 28, the House adopted a resolution by a unanimous vote in relation to giving the electors of the State notice of the submission of the canal amendment. This resolution was adopted by the Senate on January 29 by a vote of 37-0.

[*Laws, Forty-eighth Session, 240.*]

House joint resolution No. 12 in relation to giving notice to the electors of the State of Indiana, of the submission to the same for their adoption or rejection, the proposed amendment to the Constitution of Indiana, in relation to the debt charged upon the Wabash and Erie canal.

Section 1. *Be it resolved by the General Assembly of the State of*



*Indiana*, That the Secretary of State is hereby authorized and required to give notice, by publication, in the Indianapolis Journal and Sentinel, to the electors of the State, of the action of the General Assembly, in relation to the proposed amendment to the Constitution of the State of Indiana, prohibiting the payment of the indebtedness charged upon the Wabash and Erie Canal, which is to be submitted to the qualified voters of the State, on the 18th day of February, 1873, and

*Be it further resolved*, That the Governor be, and he is hereby required to give notice of the same, by proclamation to the people of the State.

(Approved January 13, 1873.)

**275. Governor Hendricks' Proclamation notifying Electors of Submission of Wabash and Erie Canal Amendment (January 31, 1873).**

In accordance with the foregoing resolution, notice of the submission of the canal amendment was given to the electors of the State on January 31, 1873.

*[Indianapolis Journal, February 1, 1873.]*

State of Indiana, Executive Department,  
Indianapolis, January 31st, 1873.

WHEREAS, By the first section of the act of the General Assembly of the State of Indiana, approved January 28, 1873, entitled "An act to provide for the submission to the qualified electors of this State for their ratification or rejection, a proposed amendment to the Constitution of Indiana therein mentioned, and declaring an emergency," it is provided that an election shall be held at the several precincts or places of holding elections in the several counties of this State, for the purpose of submitting to the qualified electors of the State, for their ratification or rejection, a proposed amendment to the Constitution of Indiana, by adding to the tenth article thereof a section in the words following, to-wit:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and



"An act supplemental to said act, passed January 29, 1847," which by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands and the tolls and revenues of the canal in said act mentioned, and no such certificate of stock shall ever be paid by this State, and

WHEREAS, By the second section of the act aforesaid, it is provided that the said election shall be held on the 18th day of February, A. D. 1873. And

WHEREAS, By a joint resolution of the General Assembly passed January 30, 1873, it is provided that the Governor shall give notice of such election by proclamation,

Now, therefore, I, Thomas A. Hendricks, Governor of the State of Indiana, in pursuance of the provisions of the said joint resolution, do issue this my proclamation hereby notifying the qualified electors of the State of the holding of the said election on said 18th day of February, A. D. 1873, at the several places of holding elections in the several counties of the State, for the purposes prescribed in the act aforesaid.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the State to be hereto affixed, at the city of Indianapolis, the date first above written.

(Seal) THOMAS A. HENDRICKS.

By the Governor.

W. W. CURRY, Secretary of State.

**276. Governor Hendricks' Proclamation Declaring the Wabash and Erie Canal Amendment in Force (March 7, 1873).**

The election was held on February 18, and on March 7, the Governor issued his proclamation declaring the amendment in force.

*[Indianapolis Journal, March 10, 1873.]*

State of Indiana, Executive Department,  
Indianapolis, March 7, 1873.

WHEREAS, *The General Assembly of the State of Indiana*, elected at the general election held on the second Tuesday of October, A. D. 1870, did at the regular session thereof, (which session was begun on the 5th day of January, 1871,) agree to pass and adopt a joint resolution in the words and figures following, to-wit:

A joint resolution, proposing an amendment to the Con-

stitution by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and hereby is proposed to the Constitution of this State, and that the same be, and is hereby agreed to and submitted to the electors of the State for their ratification or rejection: *Provided,* The same be agreed to by a majority of all the members elected to each house of the General Assembly of this State, to be chosen at the next general election, said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846; and an act supplemental to said act, passed January 28, 1847, which, by the provisions of said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State.

*Resolved, further,* That the foregoing joint resolution be, and the same is hereby referred to the General Assembly of the State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-two; and,

WHEREAS, The General Assembly of this State which was elected at the general election held on the second Tuesday in October, in the year A. D. 1872, and which convened in special session on the 13th day of November of said year, did also at said special session pass, adopt and agree to a joint resolution in the words and figures following, to-wit:

A joint resolution, agreeing to and adopting an amendment proposed to the Constitution by the last General Assembly, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal:

WHEREAS, The last General Assembly, at the regular session thereof, passed, adopted and agreed to the following joint resolution, to-wit:

A joint resolution, proposing an amendment to the Constitu-

tion, by adding to the tenth article a section in relation to the debt charged upon the Wabash and Erie Canal.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment be, and hereby is proposed to the Constitution of this State, and that the same be and is hereby agreed to and submitted to the electors of the State for their ratification or rejection; *Provided,* The same shall be agreed to by a majority of all the members elected to each house of the General Assembly of this State, to be chosen at the next general election. Said amendment to consist of the addition of the following section to the tenth article of the Constitution, in the language following:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846; and an act supplemental to said act, passed January 29th, 1847, which, by the provisions of said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificates or stocks shall ever be paid by the State.

*Resolved further,* That the foregoing joint resolution be, and the same is, hereby referred to the General Assembly of the State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-two. Now, therefore,

*Be it resolved by the General Assembly of the State of Indiana,* That the said amendment proposed to the Constitution of Indiana, contained in the said joint resolution, passed by the last General Assembly, as aforesaid, and hereinbefore recited, be and the same hereby is, agreed to and adopted by this General Assembly, and that the said amendment shall be submitted to the electors of the State for ratification at an election to be called for that purpose in pursuance of such act of the General Assembly, as may hereafter be passed, providing for such submission; and if no time is designated by this General Assembly, then shall be submitted to the people at the next general election, to be held on the second Tuesday in October, eighteen hundred and seventy-four, and

WHEREAS, For the purpose of submitting the said amend-

ment recited in both of said joint resolutions to the qualified electors of this State, for their ratification or rejection, it was enacted by the General Assembly of the State of Indiana, by an act, entitled "An act to provide for the submission to the qualified electors of this State for their ratification or rejection a proposed amendment to the Constitution of Indiana, therein mentioned and declaring an emergency," approved January 28, 1873, that an election be called and directed to be held in the several counties of this State, and in the several precincts or places of holding elections in said counties respectively, for the purpose of submitting to the qualified electors of the State for their ratification or rejection, the said proposed amendment, the said election to be held on the 18th day of February in the year of our Lord one thousand eight hundred and seventy-three; and

WHEREAS, I did, by my proclamation of January 31, A. D. 1873, in pursuance of a joint resolution of the General Assembly, directing the same, notify the qualified electors of the State of the holding of said election on the 18th day of February, A. D. 1873, at the several places of holding elections in the several counties of the State for the purposes prescribed in said act; and

WHEREAS, It has been certified to the Secretary of State by the clerks of the circuit courts of the several counties of the State (except the counties of Pulaski and Scott,) that at an election held in said several counties, as provided by said law, on the 18th day of February, A. D. 1873, the aggregate number of votes cast "For the proposed amendment to the Constitution" was one hundred and fifty-eight thousand and four hundred, and "Against the proposed amendment to the Constitution" was one thousand and thirty; and

WHEREAS, The entire number of votes in said counties of Pulaski and Scott, if cast, could not change the result of said election; and

WHEREAS, The Governor and Secretary of State have this day examined the certificates of the said clerks, as required by law, and have declared that it appears therefrom that a majority of all the votes cast at said election, were in favor of the adoption of said proposed amendment; therefore,

I, Thomas A. Hendricks, Governor of the State of Indiana, do hereby declare and proclaim that the said proposed amendment has been duly ratified by the people, and that the same is now a

part of the Constitution of the State of Indiana, to be known and designated as "Section 7 of article 10."

In witness whereof I have hereunto subscribed my name and caused the seal of the State to be hereto affixed, at the city of Indianapolis, the date first above written.

(L.S.)

THOMAS A. HENDRICKS,  
Governor of Indiana.

By the Governor,

W. W. CURRY, Secretary of State.

**277. Governor Hendricks informs General Assembly of Issuance of Proclamation Declaring Canal Amendment in Force (March 8, 1873).**

On March 8, the Governor informed the General Assembly that he had issued his proclamation declaring the Canal amendment in force.

*[House Journal, Forty-eighth Session, 858.]*

Mr. Speaker:

By direction of the Governor, I have the honor to respectfully inform the House that his Excellency did, on yesterday, in conformity to the requirements of an act of the General Assembly, entitled "An act to provide for the submission to the qualified electors of this State, for their ratification or rejection, a proposed amendment to the Constitution of Indiana, therein mentioned, and declaring an emergency," approved January 28, 1873, issue his proclamation in which he declared and proclaimed said proposed amendment, which reads as follows: to-wit:

No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act, passed January 29, 1847, which by the provisions of said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands and the tolls and revenues of the canal in said act mentioned, and no such certificates or stocks shall ever be paid by this State; a part and parcel of the Constitution of the State of Indiana, to be forever known and designated as Section 7 of Article 10.

SAMUEL R. DOWNEY,  
Private Secretary.



**278. Date of Holding General Elections (November 14, 1872).**

On November 14, Mr. Arthur C. Mellett, a Republican, introduced a bill in the House to change the time of holding general elections from the second Tuesday in October to the Tuesday after the first Monday of November. On November 19, on motion of the author, the bill was withdrawn.

[*House Journal, Special Session, 1872, 22.*]

House bill No. 1. An act amending the Constitution and changing the time of holding general elections from the second Tuesday in October to the Tuesday next following the first Monday in November.

**279. Governor Baker Recommends Calling a Constitutional Convention (November 14, 1872).**

A determined but unsuccessful effort was made at the special session of 1872 to call a constitutional convention. In his biennial message, the governor elaborated on the necessity of calling a convention and enumerated some of the amendments which in his judgment ought to be made. These changes included: (1) The expurgation of the negro provisions; (2) residential qualifications for voting to prevent the importation of fraudulent voters; (3) the reformation of the judicial system; (4) civil service reform, particularly in the administration of the benevolent, reformatory and penal institutions; and (5) removal of judges from partisan politics.

[*Senate Journal, Special Session, 1872, 20.*]

It is now more than twenty-one years since the present Constitution became the fundamental law of Indiana, and in my judgment the time has come when the best interests of the State require that provision should be made for calling a convention to be elected by the people for the purpose of revising and amending that instrument.

The thirteenth article, and all the other provisions of our Constitution, which sought to degrade men and put them under the public ban because the complexion of their skins did not happen to conform to the approved Caucasian standard, are a reproach to the State, and ought to be stricken out by command of the sovereign people themselves. It is true that these provisions are now a dead letter, but they are still in the Constitution, and printed with it every time a new edition of that instrument is published, the standing witness of our ignorance of, or indifference to human rights, until God scourged us into their recognition by the dread calamity of civil war. Under the Constitution as it now is, it is impossible to have an election law that will be efficient in preventing fraudulent voting. As long as the Constitution neither prescribes nor allows the legislature to prescribe some term

of previous residence, in the county, township, or precinct, as a pre-requisite to the exercise of the right of suffrage, all efforts to prevent the importation of fraudulent voters must be nugatory. The Constitution itself ought to prescribe some term of residence in the proper locality as a condition precedent to the right to vote.

There is little ground of hope that our judicial system will be reformed and adapted to the wants of the people until the Constitution shall itself have been remodeled, and it would require the exercise of superior ingenuity to devise a worse judicial system than that under which we now suffer. There is at present a great demand for civil service reform in the general government, and in reference thereto, I join in the hope that the hand of reform may not be stayed until the nearest approach to perfection possible in human affairs shall have been attained. I think, however, that the civil service of the State is not so perfect as to justify us in giving all our attention to that of the country at large. The management of our benevolent reformatory and penal institutions, is liable to be revolutionized by the triumph of this party or that at any general election. This ought not so to be, and there can be no effectual remedy without an amendment to the Constitution. The directors or managers of these institutions should hold for longer official terms than the legislature is permitted to create, and a portion of them should go out every year, or every two years, so that the government thereof would be raised above the mutations of mere party, and the requisite experience would always be preserved.

The judges of the Supreme Court, too, are all elected at the same time, and for the same term of years, and always succeed as the nominees of a political party. The tendency of this is to make the judges partisans, and the fact that every sixth year the bench may be politically revolutionized, creates a temptation on the part of the successful candidates to attempt to secure favor with their party by undoing much of what their politically heterodox predecessors have done. That in point of fact, we have had so little of this to complain of, is greatly to the credit of the judges who have from time to time succeeded to the bench, but the system itself is none the less vicious. If the judiciary ought to be elected by the people at all, a proposition, by the way, which I do not think experience has sanctioned, a portion only of the judges of the Supreme Court should retire and their successors be elected at the same time, so that the probabilities of the exist-

ence of a partisan bench would be diminished, and so that the court would never be without judges of experience and familiar with the duties of the particular position.

If this General Assembly should see proper to provide for calling a constitutional convention, I do not think it should, on that account, omit to adopt and submit to the people for ratification, the pending amendment in relation to the canal debt. Let that amendment by all means be adopted, and it can be submitted, without additional expense to the people, for ratification at the same election at which the delegates to the convention shall be chosen, and if it is ratified, as assuredly it will be, the popular vote ratifying it will be an imperative instruction to the convention to put a similar provision in the revised Constitution. Besides this, the pending amendment, if thus adopted and ratified, would bind the legislature until the new Constitution shall have been approved by the people, and also provide against the possible contingency of the convention framing such a Constitution as the people might reject.

#### **280. Unsuccessful Attempts to Call a Constitutional Convention (1872).**

This enthusiastic recommendation of the Governor led to several attempts to provide for the submission of the question of calling a convention. Two of these measures were introduced in the Senate and two in the House, but none of them passed both houses. On December 3, Mr. Asbury Steele, a Republican, introduced a bill in the Senate to provide for calling a constitutional convention, but apparently no subsequent action was taken.

*[Senate Journal, Special Session, 1872, 198.]*

Senate bill No. 113. A bill to provide for calling a convention to revise, alter or amend the Constitution of Indiana.

On December 9, Mr. Richard Gregg, a Liberal, introduced a bill in the Senate which was indefinitely postponed.

*[Senate Journal, Special Session, 1872, 281.]*

Senate bill No. 142. An act providing for taking the sense of the qualified voters of this State, on the calling of a convention to alter, amend or revise the Constitution of this State.

Meantime, on December 2, Mr. David C. Branham, a Republican, introduced a similar bill in the House which was referred to the Judiciary Committee who on January 23, recommended that the bill be laid on the table, which was concurred in.

[*House Journal, Special Session, 1872, 230.*]

House bill No. 153. An act to provide for the call of a convention of the people of the State of Indiana, to form a Constitution for said State.

**231. Governor Baker's Plea for a Constitutional Convention (January 10, 1873).**

On December 14, Mr. Mahlon D. Heller, a Liberal, introduced a bill in the House which was referred to the Committee on County and Township Business. On December 20, the committee reported the bill back to the House and recommended its passage, but, by consent of the House, the report and bill were laid on the table until the following session. The Governor had not given up hopes of calling a constitutional convention, and while this measure was still pending in the House, he renewed his efforts to provide for a call of a constitutional convention by elaborating an economical plan in his biennial message of January 10, 1873.

[*House Journal, Forty-eighth Session, 25.*]

Being still deeply impressed with the necessity and importance of calling a convention of the people at an early day to revise the Constitution of the State, I respectfully submit the following recommendations in relation to the submission of the proposed amendment to the people for ratification, and also in relation to the calling of a convention to make a thorough revision of the Constitution; that is to say: Let an act or acts be passed making the following provisions, viz.:

*First.* For submitting said proposed amendment to the people for ratification, at an election to be held on the second Tuesday in October, 1873.

*Second,* Providing further for the election, at the same election, of delegates to a constitutional convention to revise the Constitution.

*Third,* Providing still further, that at the same election the question whether a constitutional convention shall be convened or not, shall be submitted to a direct vote of the people, and that if a majority of all the votes cast on the question at such election shall be in favor of the calling of a convention, then the convention shall meet as may be provided for in the act, but that if a majority of said votes shall be against a convention, then no convention shall meet in pursuance of the provisions of the act, and the election of delegates shall, by reason of such adverse vote, become null and void.

By this plan the expense of but one election would be incurred,

and yet all the questions involved would be submitted to and decided by the qualified electors of the State.

**282. Attempt to Hold a Constitutional Convention (January 15, 1873).**

On January 15, the constitutional convention bill was taken up and referred to the Judiciary Committee. On January 23, the bill was reported back without recommendation, and advanced to engrossment. On February 5, the bill passed the House by a vote of 52-29. On March 3, the bill was received by the Senate and referred to the Committee on Elections, which on March 4 made a favorable report, but no further action was taken.

*[House Journal, Special Session, 1872, 480.]*

House bill No. 236. An act providing for taking the sense of the qualified voters of this State on the calling of a convention to alter, amend, or revise the Constitution of this State.

**THE FORTY-EIGHTH GENERAL ASSEMBLY (1873).**

The personnel of the regular Assembly of 1873 was the same as the personnel of the special session of 1872. The session was characterized chiefly by attempts to secure amendments to the Constitution eliminating those provisions of the Constitution excluding negroes and mulattoes from full participation in civil and political rights. These provisions were, of course, null and void as being in conflict with the recent amendments of the Federal Constitution but they had never been stricken out, and in his message to the special session of 1872 Governor Baker had asked that this might be done. Incidentally, certain residential qualifications for suffrage were prescribed. In his inaugural address, delivered to the two houses of the General Assembly on January 13, Governor Hendricks recommended the enactment of laws to secure election reform, in order that there might be a fair and real representation on the election boards; that the number of voting places might be increased and their size reduced; that there might be "a reasonable period of residence in the election precinct as a qualification to vote, so that persons may not pretend a residence not real, in fraud of the law;" and that money might be excluded as a power and influence in elections. In order to prescribe residential qualifications for voters, the Governor thought it would be necessary to secure a constitutional amendment and he therefore recommended that such an amendment be adopted.

**283. Governor Hendricks Recommends Constitutional Amendment Prescribing Residence Qualifications for Electors (January 13, 1873).**

*[House Journal, Forty-eighth Session, 80.]*

You will find an amendment of the second article of the Constitution necessary to enable the legislature to prescribe such period of residence. The Constitution wisely provides



for its own amendment, by a convenient and economical proceeding, which renders it unnecessary to throw upon the people the expense of a convention, and avoids the possibility of changes not desired by them.

**284. Qualifications for Suffrage; Dispensing with Constitutional Rule in Passage of Bills; Defining a Quorum; Vote Necessary to Pass Apportionment Bills; Duration of a Legislative Session; Membership of Supreme Court; Exclusion and Colonization of Negroes; Special Judicial Elections; Municipal Debt Limit.**

On January 23, Mr. Thomas W. Woolen presented the following resolution in the House, relating to a special constitutional committee, which was adopted.

*[House Journal, Forty-eighth Session, 214.]*

WHEREAS, By an act of the General Assembly of Tuesday, February 18, 1873, has been fixed for the electors of the State to accept or reject the amendment now pending to the Constitution of the State; and

WHEREAS, The Constitution requires amendments in several particulars, and such amendments should be submitted for the consideration of the General Assembly as early as possible, so that they may be disposed of, and incorporated in the Constitution; therefore,

*Resolved*, the Senate concurring herein, That a committee of five on the part of the House, and three on the part of the Senate, be appointed to mature and submit to this General Assembly such amendments to the Constitution as they may deem proper, and that they report on the 20th day of February next.

On January 27, the Speaker appointed as the House members of this committee Messrs. Woolen, Lewis C. Walker, Wilson of Ripley, Henry S. Cauthorn and Christian S. Wesner. On January 28, the resolution was submitted to the Senate and adopted on January 29. On January 30, the President appointed as the Senate members of the committee Messrs. Jason B. Brown, Lucius Hubbard and A. J. Boone. The reports from this joint committee were made on March 8. The proposed amendments were taken up in the House and disposed of at once, but their consideration in the Senate was deferred until March 10. The reports as made to the two houses are identical.

*[Senate Journal, Forty-eighth Session, 1031.]*

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendments be and the same are hereby proposed to the Constitution of this State, and that the same be

and are hereby agreed to and referred to the General Assembly to be chosen at the next general election, to-wit:

(1) Amend Article two, Section two to read as follows:

Section 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during the twelve months and in the county three months immediately preceding such election, and every male citizen of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one or more years, and shall have resided in the State the twelve months and in the county three months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he shall have resided for the thirty days immediately preceding such election.

(2) Amend by striking out Section 5 of Article 2.

(3) Amend Section 4, Article 4, by striking out of the same the word "white."

(4) Amend Section 5 of Article 4, by striking out of the same the word "white."

(5) Amend Section 18 of Article 4, to read as follows:

Sec. 18. Every bill shall be read by sections on three several days, in each house, unless in case of emergency a majority of all the members elected to the House where such bill may be depending, shall by a vote of yeas and nays deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage, shall in no case be dispensed with, and the vote on the passage of every bill or joint resolution shall be taken by ayes and nays.

(6) Section 11, Article 4, shall be amended to read as follows:

Sec. 11. A majority of each house shall constitute a quorum to do business; but a smaller number may meet and adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either house fail to effect an organization within the first five days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said five days until an organization shall have been effected.

(7) Amend Section 25 of Article 4, to read as follows:

Sec. 25. A majority of all the members of each house shall be necessary to pass every bill or joint resolution, and every bill to district the State for legislative purposes shall further require a vote of two-thirds of each house present and voting, and all bills and joint resolutions so passed shall be signed by the presiding officer of the respective houses.

(8) Amend Section 29, Article 4, to read as follows, viz.:

Sec. 29. The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of one hundred days, nor any special session beyond the term of forty days.

(9) Amend Section 2 of Article 7, to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than seven judges, a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well, provided that the judges elected at the first election after the taking effect of this amendment shall be divided by lot into three classes, as nearly as may be, the fraction to be in the last class, and the seats of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years and those of the third class at the expiration of six years, so that one-third, as nearly as practicable, shall be chosen biennially forever thereafter.

(10) Amend by striking out all of the sections in Article 13, and inserting in lieu thereof the following section:

Section 1. No political or municipal corporation in the State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county purposes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by such corporation shall be void.

By proposed amendment 1, full political rights were conferred on negroes and mulattoes; the period of residence in the State to acquire the right of suffrage was raised from six months to one year, and a residence of three months in the county and thirty days in the township or precinct was also prescribed. This amendment was adopted by the House by a vote of 77-8. In the Senate Mr. Wiley E. Dittmore proposed to amend the amendment by striking out the word "male," thus extending the right of suffrage to all citizens, presumably including women. An attempt by Mr. James D.

Williams to reduce the period of residence in the State from twelve to six months, as then provided in the Constitution, was lost by a vote of 18-22, and an attempt by Mr. Richard Gregg to eliminate all references to residence in the county was also lost. The amendment then passed the Senate by a vote of 28-9. Up to this point, the Senate had been considering their own resolution; at this juncture, the House resolution was presented and the consideration of the Senate resolution was discontinued. This same section was reconsidered and re-adopted by a vote of 30-6.

Amendment No. 2 proposed to strike out the whole of Section 5, Article 2, which reads: "No negro or mulatto shall have the right of suffrage." This amendment was adopted by the House by a vote of 68-9 and by the Senate by a vote of 28-7.

Amendment No. 3 was designed to strike out the word "white" in Section 4 of Article 4, which provided that the sexennial enumeration should be based on the white male inhabitants of the State above the age of twenty-one years. The House adopted this resolution by a vote of 69-6 and the Senate by a vote of 27-9.

Amendment No. 4 was similar and proposed to strike out the word "white" in Section 5 of Article 4, which provided for the apportionment of senators and representatives on the basis of the number of white male inhabitants above the age of twenty-one years. The House adopted this amendment by a vote of 67-9, and the Senate by a vote of 28-8.

Amendment No. 5, was designed to amend Section 18, Article 4, to provide that in dispensing with the constitutional rule, a majority, instead of two-thirds of the members, should be sufficient. The House passed this amendment by a vote of 51-33, but it failed in the Senate by a vote of 15-23.

Amendment No. 6 proposed to constitute a majority of two-thirds of each House a quorum to do business. This proposition was defeated in the House by a vote of 49-30, and in the Senate by a vote of 23-15.

Amendment No. 7 added a clause to Section 25, Article 4, to provide that "every bill to district the State for legislative purposes shall further require a vote of two-thirds of each house present and voting." This resolution was defeated in the House by a vote of 45-26, and was not reported to the Senate.

Amendment No. 8 increased the length of legislative sessions to one hundred days. It was lost in the House for want of a constitutional majority, the vote being 49-23.

Amendment No. 9 proposed a change in Section 2 of Article 7 by which the number of Supreme Court judges was increased from a minimum of three to a minimum of five and from a maximum of five to a maximum of seven, so elected that one-third of the whole number should retire biennially. This amendment passed the House by a vote of 66-12. After a proposed amendment by Mr. Addison Daggy to abolish the Supreme Court was rejected by a vote of 6-30, the amendment was adopted by the Senate by a vote of 30-7.

Amendment No. 10 struck out the negro colonization and exclusion section, and inserted in lieu thereof the section fixing the debt limit of municipal corporations. This amendment was adopted by the House by a vote of 60-13, and the Senate by a vote of 34-4.



On March 10, all of the amendments which the House had adopted were adopted as a whole by a vote of 51-16.

When the Senate had completed the consideration of the foregoing resolutions, Mr. Daggy proposed an amendment to constitute Section 22 of Article 7, by providing "The election for judicial officers may be provided for by the General Assembly to take place at such time when no other election is pending." This additional amendment was adopted by a vote of 30-7 by the Senate. The resolution as a whole, including all of the foregoing amendments adopted, was passed by the Senate by a vote of 30-7. Later the same day the proposed additional resolution was concurred in by the House.

[*Laws, Forty-eighth Session, 248.*]

Joint resolution No. 22. A joint resolution proposing amendments to the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendments to the Constitution of the State of Indiana be submitted to the people of this State for their adoption or rejection:

Sec. 2. Amend Section 2, Article 2, to read as follows: Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during the twelve months and in the county three months immediately preceding such election; and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one or more years, and shall have resided in the State during the twelve months, and in the county three months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he shall have resided for the thirty days immediately preceding such election.

Sec. 3. Amend by striking out Section 5 of Article 2.

Sec. 4. Amend Section four of Article 4, by striking out of the same the word "white."

Sec. 5. Amend Section five of Article 4, by striking out of the same the word "white."

Sec. 6. Amend Section two of Article 7 to read as follows: Sec. 2. The Supreme Court shall consist of not less than five nor more than seven judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well, provided that the judges elected at the first election



after the taking effect of this amendment shall be divided by lot into three classes as nearly as may be, the fraction to be in the last class, and the seats of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years, and those of the third class at the expiration of six years, so that one third, as nearly as practicable, shall be chosen biennially forever thereafter.

Sec. 7. Amend by striking out all of the sections in Article 13, and inserting in lieu thereof the following section: Sec. 1. No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county purposes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount, given by such corporations, shall be void.

Sec. 8. Amend further by adding the following section to article seven of Section 22. The election for judicial officers may be provided for by the General Assembly to take place at such time when no other election is pending.

#### 285. Date of Holding General Elections (March 10, 1873).

On March 10, Mr. Henry S. Cauthorn, a Liberal, introduced a resolution in the House changing the date of holding general elections. The proposed amendment passed the House by a vote of 66-1.

*[House Journal, Forty-eighth Session, 932.]*

Amend Section 14 of Article 2, of the Constitution of the State so as to read as follows to-wit:

Sec. 14. All general elections shall be held on such day as shall be provided by law.

The Senate referred this proposed amendment to a select committee of three who reported it back in the following form:

House joint resolution No. 23. A joint resolution to amend Section 14, Article 2 of the Constitution.

*Be it resolved by the General Assembly of the State of Indiana,* That Section 14 of Article 2 of the Constitution be and the same is hereby amended so as to read as follows, to-wit:

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November until otherwise provided by law.

When this resolution was under consideration, Mr. Wiley E. Dittmore

moved to reconsider the vote on his motion, made earlier the same day, to strike out the word "male" and thus confer the right of suffrage on women. The motion was lost by a vote of 20-14. Mr. H. C. Gooding wished to amend the section to read as follows:

Section 13. All elections by the people shall be by ballot but the General Assembly may pass laws for the registration of voters and the numbering of ballots. All elections by the General Assembly, or either branch thereof shall be *viva voce*.

This motion was laid on the table. The resolution as a whole was then adopted by a vote of 30-7, and concurred in by the House.

[*Laws, Forty-eighth Session, 249.*]

Joint resolution No. 23. A joint resolution to amend Article 2, Section 14 of the Constitution.

*Be it resolved by the General Assembly of the State of Indiana,* That Section 14, of Article 2, of the Constitution be, and the same is hereby amended so as to read as follows, to-wit:

Section 14. All general elections shall be held on the first Tuesday after the first Monday in November, until otherwise provided by law.

**236. Woman Suffrage—Governor Baker's Recommendation (January 10, 1873).**

With his biennial message of January 10, 1873, Governor Baker transmitted a memorial of The American Woman Suffrage Association asking the General Assembly for a hearing on the propositions therein set forth; and to this request the Governor added his recommendation.

[*House Journal, Forty-eighth Session, 26.*]

I submit herewith at the request of sundry good citizens of this State, their petition presenting the accompanying memorial of "The American Woman Suffrage Association," and requesting the General Assembly to fix a time when such persons as may be selected for the purpose by said Association, shall receive from you a patient and respectful hearing on the propositions contained in the memorial. I cordially join in the request of the petitioners, and add that the propositions contained in the memorial are in themselves worthy in my judgment of the most thoughtful consideration of the American statesman.

For my part I am willing to give my vote and influence in favor of conferring the right of suffrage on the women of Indiana whenever they shall with any considerable degree of unanimity

signify a desire to assume the responsibilities which such a change in their relations to the State would impose.

**287. Memorial of American Woman Suffrage Association (January 17, 1873).**

On January 17, a joint meeting of the two Houses was held to consider the memorial, and addresses were made by two of the leaders of this organization.

*[House Journal, Forty-eighth Session, 145.]*

To the Senate and House of Representatives of the State of Indiana:

The American Woman Suffrage Association respectfully represents:

*First.* That whereas the first section of the second article of the Constitution of the United States expressly provides, each State shall appoint as the legislature thereof may direct the electors for President and Vice President, and whereas women are now unjustly excluded from any participation in the election of those highest officers of the nation, we therefore respectfully pray your honorable bodies, that you will exercise the authority thus vested in you by the Federal Constitution and enact a law, conferring suffrage upon women who are citizens of the United States and the State of Indiana, in future presidential elections upon the same terms and conditions as men, and we further respectfully represent:

*Second.* That whereas, the Constitutions of many of the States contain no restriction upon the exercise of suffrage by women in regard to the election of certain State, county, town and municipal officers, we therefore respectfully pray that you will enact a law abolishing all political distinctions on account of sex, except where the same are expressly contained in the present Constitution of your State, and we further respectfully represent:

*Third.* That whereas, the Constitution of the State of Indiana restricts suffrage for certain officers to men alone; therefore, we respectfully pray your honorable body to take the necessary steps to amend the State Constitution so as to abolish hereafter all political distinctions on account of sex.

This memorial is presented in accordance with a resolution adopted at the annual meeting of said American Woman Suffrage

Association held in St. Louis on the twenty-second of November, A. D. 1872, composed of delegates from auxiliary State societies.

THOMAS WENTWORTH HIGGINSON, President.

LUCY STONE, Chairman Ex. Committee.

HENRY B. BLACKWELL, Cor. Secretary.

MARY GREW, Recording Secretary.

**288. Woman Suffrage Constitutional Amendment (March 10, 1873).**

On March 10, Mr. John D. Miller, a Republican, introduced the following resolution in the House providing for the submission of the woman suffrage proposition to a referendum vote of the women themselves. Mr. John Groenendyke offered as a substitute a joint resolution to amend Article 2, Section 2 of the Constitution by striking out the word "male" after the word "white." The amendment and the substitute were both laid on the table, and not subsequently considered.

*[House Journal, Forty-eighth Session, 941.]*

Amend Article 15 of the Constitution, by adding thereto the following sections:

Sec. 4. It shall be the duty of the General Assembly first convening after the taking effect of this amendment by proper legislation to submit to the female inhabitants of the State, of the age of twenty-one years, and being qualified as to residence as required of other electors, the question: "for female suffrage" and "against female suffrage."

Sec. 5. Should the greater number of votes mentioned in the last preceding section be for "female suffrage," then and in that case the right of suffrage and election shall be extended to female inhabitants of the State of the age of twenty-one years and upwards having the same qualifications as to residence as required of other electors.

**289. Railroad Rates and Discrimination (January 27, 1873).**

On January 27, Mr. Theophilus Crumpacker introduced a resolution in the House instructing the Judiciary Committee to inquire into the constitutionality of a law fixing the rates for the transportation of freight and passengers. This resolution was adopted.

*[House Journal, Forty-eighth Session, 227.]*

*Resolved*, That the Committee on the Judiciary is hereby instructed to inquire into the constitutional power of the legislature to fix by law the rates of fare which shall be collected by the

railroads now being operated in this State, or passing into or through the same, and in their report to discriminate between those companies organized under the general statute for the incorporation of railroad companies, and the acts supplemental and amendatory thereof, and those organized under special acts and report by bill or otherwise, and at an early day, and to enable said committee to fully inquire into said matters, the Secretary of State is requested to furnish the said committee a statement showing the name of each railroad corporation organized in this State, and the date of its organization, also showing the consolidation of all railroad companies and the date of such consolidation, and other information connected with the subject matter of this resolution that said committee may desire for their information.

**290. Railroad Rates and Discrimination (March 10, 1873).**

On March 10, Mr. Jethro A. Hatch, a Republican, introduced a resolution in the House proposing an amendment to the Constitution authorizing the General Assembly to pass laws fixing maximum transportation rates. The resolution failed to secure a constitutional majority, the vote being 41-9, twenty members being present but not voting.

*[House Journal, Forty-eighth Session, 944.]*

Sec. —, Article —. Railways heretofore constructed or that may be constructed in this State, are hereby declared public highways, and shall be free to all persons, for the transportation of their person or their property thereon under such regulations as may be prescribed by law, and the General Assembly shall from time to time pass laws, establishing reasonable maximum rates of charges for the transportation of passengers and freights on the different railroads in this State. The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortions in the rate of freights and passengers' tariff on the different roads in the State and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

**291. Titles of Bills—Governor Baker's Recommendation (January 10, 1873).**

In his biennial message of January 10, 1873, Governor Baker called attention to a matter of legislative practice in the wording of the titles of bills to conform with the constitutional requirement which has an indirect



significance in the treatment of the constitutional development of the State.

[*House Journal, Forty-eighth Session, 29.*]

The kindness with which you receive, and the promptness with which you adopted a few suggestions I made in my last message in relation to the journals of the two houses, encourages me to call your attention to another matter of legislative practice, in which there is great need of improvement. I allude to the titles of many of the bills that are passed from time to time. The impression seems to prevail that because the Constitution has declared "that every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title", it therefore follows that the title of bills must be longer than was necessary before such a provision existed. Such an impression is altogether incorrect. The principal subject, or one of the principal subjects of the act, should be briefly expressed in the title, and this being done, every matter properly connected with the one so expressed, can be provided for without being alluded to in the title. Such phrases as the following are always unnecessary, and therefore inelegant and improper in the titles of bills, viz.: "And to declare an emergency," "and to repeal all laws inconsistent therewith," "and matters properly connected therewith," etc., etc. A very cursory examination of our legislation for years past, not excluding that of the late special session, will satisfy you how sadly our legislative literature is marred by the singularly grotesque, inelegant and almost interminable titles that are too often prefixed to bills. Not a few of these bills were signed by me as approved, but I want it distinctly understood that I reserve the right to protest against such titles. The title of one of them passed at the late special session, contains one hundred and sixty words, when a perfect title could have been framed in fifteen words. It is almost impossible to amend an act with such a title, so as to make the amendatory act and its title intelligible. I suggest the propriety of having a joint committee, whose duty it shall be to supervise the titles of bills, so that our statute books in the future may not be deformed by such titles as those to which allusion is made.

**292. Proportional Representation—Governor Hendricks' Recommendation (January 13, 1873).**

A subject of more than ordinary importance, intimately connected with a possible constitutional change, is contained in a recommendation which Governor Hendricks made to the forty-eighth General Assembly in his

inaugural address. He there advanced the ambitious scheme of substituting proportional for majority representation; he illustrated very aptly some of the inequalities of the latter method and adverted to a similar proposal which had been submitted to the consideration of the Congress of the United States.

[*House Journal, Forty-eighth Session, 80.*]

In this connection I wish to call attention to the subject of representative reform, which, during the last ten years, has been advocated by some of the best minds, both in Europe and this country, and is now undergoing the test of experience. I desire to make this the more emphatic, because in this State it seems yet to be regarded as right and proper, for the majority to deny to the minority even that representation, which an apportionment based upon population, and contiguity of counties would give. Representative reform rests upon the proposition that minorities of constituencies should have a representation as nearly in proportion to numbers as may be practicable. All the citizens contribute to the burdens of government, and should yield obedience to the laws, and it is just, equal, and fair that all should be represented. One of the ablest of English statesmen, in the debate in the House of Lords, on the reform bill of 1867, suggested this illustration: suppose a representative district has ten thousand voters, and six thousand are of one side in politics, and four thousand of the other, would that district not be better represented if both the six thousand and the four thousand were represented, than if the votes of either be wholly rejected, and without influence and power? He added: "I can well understand men who are extremely intolerant and exclusive in politics, objecting to give any voice to those whose political views are distasteful to them; but I cannot understand such an objection being urged by those who are in favor of having public opinion fairly represented."

The advantages of this reform are obvious. Political asperities would be modified; local satisfaction would be produced; the temptation to corruption and bribery at elections would be greatly removed; and security and permanency would be given to the influence and power of the minority, thus securing a check upon the majority, should it become arrogant or unscrupulous, so that legislation would proceed more for the people and less for party.

This constituted a striking feature in the great reform measure of 1867 in England, a measure which greatly increased the powers

and fortified the rights of the industrial classes in that country. It was partially adopted in the selection of delegates to the constitutional convention of 1867, in New York; it is recognized in the selection of jury commissioners and election officers in Pennsylvania; and is an important provision in the new Constitution of the great State of Illinois. This reform has also been the subject of careful consideration in Congress. On the 2d of March, 1869, Mr. Senator Wade, from a select committee, reported a bill providing for its adoption in the election of members of Congress. I will not undertake an examination of the different propositions whereby representative reform may be attained; that will be carefully considered by the legislature, should a constitutional amendment on the subject be submitted to the people; but as a practical illustration of one of the modes, I quote the bill as reported to the Senate by Mr. Senator Wade: "A bill to amend the representation of the people in Congress. Be it enacted, etc. That in elections for the choice of representatives to the Congress of the United States, whenever more than one representative is to be chosen from a State each elector of such State duly qualified, shall be entitled to a number of votes equal to the number of representatives to be chosen from the State, and may give all such votes to one candidate, or may distribute them, equally or unequally, among a greater number of candidates, and the candidates highest in vote upon the return shall be declared elected."

#### THE FORTY-NINTH GENERAL ASSEMBLY OF 1875 AND THE SPECIAL SESSION OF 1875.

The forty-ninth General Assembly of 1875 was predominantly Democratic. The Senate was composed of 23 Democrats, 22 Republicans and 5 Independents, and the House of 60 Democrats, 32 Republicans and 8 Independents. The regular session expired by constitutional limitation on January 8, 1875,\* and a special session was called by Governor Hendricks to meet the following day because of "a failure to pass laws indispensable to the administration of the State government, including the revenue and general appropriation bills . . . ." The General Assembly of 1875 was competent to act on the proposed constitutional amendments submitted by the General Assembly of 1873, and although these measures were considered, none were advanced to maturity.

#### 293. Pending Amendments Concerning Suffrage, Supreme Court Judges, Municipal Debt Limit and Special Judicial Elections (January 15, 1875).

The pending amendments, adopted by the General Assembly of 1873, were introduced in the House on January 15 by Mr. Samuel Woody, a

\*((Date should be March 8, 1875.))

Republican; on January 18, the resolution was referred to the Judiciary Committee; on January 27, the committee reported the resolution back to the House without recommendation; on February 10, the resolution was indefinitely postponed by a vote of 50-41.

[*House Journal, Forty-ninth Session, 160.*]

A joint resolution agreeing to and adopting amendments proposed to the Constitution of the State by the last General Assembly by the following changes and additions:

Amending Article 2, Section 2, by striking out Section 5 of Article 2; amending Section 4 of Article 4; amending Section 2 of Article 7; amending by striking out all of the sections of Article 13 and inserting in lieu thereof Section 1; amending Article 7 by adding thereto Section 22: WHEREAS, The last General Assembly at the regular session thereof, passed, adopted and agreed to the following joint resolution to wit: A joint resolution proposing amendments to the Constitution of the State of Indiana by amending Article 2, Section 2; by striking out Section 5, Article 2; amending Section 4 of Article 4; amending Section 5 of Article 4; amending Section 2 of Article 7; amending by striking out all of the sections in Article 13, and inserting in lieu thereof Section 1, and amending further by adding to Article 7 Section 22.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendments to the Constitution of the State of Indiana be submitted to the people of this State for their adoption or rejection. *Provided,* The same shall be agreed to by a majority of all the members elected to each house of the General Assembly of this State, to be chosen at the next general election. Said amendments to consist of the following additions and changes of the aforesaid articles and sections of articles of the Constitution of the State of Indiana, in the following language:

Sec. 2. Amend Article 2 Section 2 to read as follows: Section 2. In all elections not otherwise provided for by the Constitution every male citizen of the United States of the age of twenty-one years and upwards who shall have resided in the State during the twelve months, and in the county three months immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards who shall have resided in the United States one or more years, and shall have resided in the State during the twelve months and in the county three months immediately preceding such election, and shall have declared his intentions to become a citizen of the United States



conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he shall have resided for the thirty days immediately preceding such election.

Sec. 3. Amend by striking out Section 5 of Article 2.

Sec. 4. Amend Section 4 of Article 4 by striking out of the same the word "white."

Sec. 5. Amend Section 5 of Article 4 by striking out of the same the word "white."

Sec. 6. Amend Section 2 of Article 7, to read as follows:  
Sec. 2. The Supreme Court shall consist of not less than five nor more than seven judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well; *Provided*, That the judges elected at the first election after the taking effect of this amendment, shall be divided by lot into three classes as nearly as may be. The fraction to be in the last class, and the seats of the first class shall be vacated at the expiration of two years; those of the second class at the expiration of four years, and those of the third class at the expiration of six years, so that one-third as nearly as practicable, shall be chosen biennially forever thereafter.

Sec. 7. Amend by striking out all of the sections in Article 13 and inserting in lieu thereof the following: Section 1. No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State or county purposes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by such corporations shall be void.

Sec. 8. Amend further by adding the following section to Article 7, Section 22: The election for judicial officers may be provided for by the General Assembly to take place at such time when no other election is pending. *Resolved further*, That the foregoing joint resolution be, and the same is, hereby referred to the General Assembly of this State, to be chosen at the general election to be held on the second Tuesday in October, in the year of our Lord one thousand eight hundred and seventy-four. Now be it

*Resolved by the General Assembly of the State of Indiana*, That the said amendments proposed to the Constitution of the State of Indiana contained in said joint resolution, passed by the last



General Assembly, as aforesaid and hereinbefore recited, be, and the same is hereby agreed to and adopted by this General Assembly, and that the said amendments shall be submitted to the electors of the States for ratification or rejection at an election to be called for that purpose, in pursuance of such an act of the General Assembly as may hereafter be passed, providing for such submission, and if no time is designated by this General Assembly they shall be submitted to the people at the next general election, to be held on the second Tuesday of October in the year of our Lord one thousand eight hundred and seventy-six.

On January 22, the same amendments were introduced in the Senate and referred to the Judiciary Committee; on February 18, a week after the same resolution had been indefinitely postponed in the House, the committee reported the resolution back to the Senate and recommended passage. The resolution was placed on the calendar but was not subsequently considered.

On March 5, the resolution fixing the date of general elections was read a first time in the Senate and referred to the Judiciary Committee with instructions to report the same day. The report was made accordingly, with the recommendation that the resolution pass. The constitutional rule was suspended by a vote of 41-3 and the resolution passed by a vote of 44-2. On March 6, the resolution was reported to the House and was read a first time; an attempt was made to suspend the constitutional rule and read the resolution a second time, but the attempt failed by a vote of 32-57; on March 8, the resolution was read a second time and an attempt to suspend the constitutional rule and read the resolution a third time failed by a vote of 34-42. At the beginning of the special session, the resolution was reported on third reading but was not subsequently considered.

*[House Journal, Forty-ninth Session, 1296.]*

Senate joint resolution No. 12. A joint resolution to amend Article 2 Section 14 of the Constitution.

*Be it resolved by the General Assembly of the State of Indiana:* That Section 14 of Article 2 of the Constitution be and the same is hereby amended so as to read as follows, to wit:

Section 14. All general elections shall be held on the first Tuesday after the first Monday in November until otherwise provided by law.

#### THE FIFTIETH GENERAL ASSEMBLY (1877).

As has been shown above, the session of 1875 failed to take any definitive action on the proposed constitutional amendments submitted by the General Assembly of 1873, and it was therefore necessary to begin the process anew. In his biennial message, on January 5, 1877, Governor Hendricks repeated what he had already said in his inaugural address concerning the safe-

guarding of elections, and again recommended that the constitutional amendments necessary to safeguard the franchise should be adopted. He also urged the General Assembly to change the date of holding general elections to conform to the practice in other states.

**294. Date of Holding General Elections—Governor Hendricks' Recommendations (January 5, 1877).**

[*Senate Journal, Fiftieth Session, 34.*]

Most of the States have now adopted the Tuesday next after the first Monday in November as the time for their general elections. Our general elections should take place at the same time. I need not give the reasons. They are obvious. I recommend that, without any delay, you take steps for the amendment of the Constitution so that our elections shall occur at the same time as in the other States, and so as to require a residence of at least sixty days in the election precinct as a qualification to vote.

**295. Residential Qualifications for Suffrage; Date of Holding General Elections; Tenure of County Officers; Special Legislation on Subject of Fees and Salaries; Woman Suffrage; Negro Exclusion and Colonization; Stock in Corporations; Judiciary; Negro Suffrage; Registration of Voters; Special Township and Judicial Elections; Municipal Debt Limit; Duration of Regular and Special Sessions of General Assembly.**

On January 6, Mr. M. Trusler, a Republican, introduced a resolution in the Senate to amend the suffrage qualifications of the Constitution.

As reconstructed from newspaper reports, the amendment was as follows:

Senate joint resolution No. 2. A joint resolution proposing to amend Section 2, Article 2, of the Constitution of the State of Indiana.

Sec. 2. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election; and every white male, of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he shall have resided sixty days next preceding such election, and when his name shall have been regis-

tered according to such regulations as may be prescribed by law.

On January 9, Mr. Trusler introduced a resolution changing the time of holding general elections. The newspaper report is as follows:

Senate joint resolution No. 3. A joint resolution to amend Article 2, Section 14, of the Constitution of the State of Indiana.

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November.

On the same day Mr. Trusler proposed another amendment relative to the tenure of county officers. This resolution fixed the term of office of the clerk of the circuit court, county auditor, treasurer and sheriff at four years and disqualified the incumbents for re-election and fixed the terms of surveyor and coroner at two years.

[*Senate Journal, Fiftieth Session, 59.*]

Senate joint resolution No. 4. A joint resolution to amend Section 2 of Article 6 of the Constitution of the State of Indiana.

On January 10, Mr. J. D. Sarninghausen, a Democrat, introduced a resolution in the Senate to permit special legislation on the subject of fees and salaries.

[*Senate Journal, Fiftieth Session, 70.*]

Senate joint resolution No. 5. A joint resolution amending Section 22, Article 4, of the Constitution of the State of Indiana.

On January 11, Mr. Addison C. Harris, a Republican, introduced a resolution in the Senate which, according to the press reports, was identical with one of the resolutions proposed in 1873 and defeated in 1875.

[*Senate Journal, Fiftieth Session, 78.*]

Senate joint resolution No. 7. A joint resolution proposing amendments to the Constitution of the State of Indiana.

On January 16, Mr. S. M. Taylor, a Republican, introduced a resolution in the Senate providing for woman suffrage.

[*Senate Journal, Fiftieth Session, 95.*]

Senate joint resolution No. 9. A joint resolution proposing amendments to the Constitution of the State of Indiana.

On January 17, Mr. Addison C. Harris introduced a resolution in the Senate to amend the Constitution so as to forbid subscriptions to the stock of any corporation or company by any city, town, county or township, or the giving of any donations of money or credit to the same, or the enactment of any law authorizing the assessment of any debt of any person or corporation by any county, city or township.

[*Senate Journal, Fiftieth Session, 109.*]

Senate joint resolution No. 10. A joint resolution to amend Section 6, of Article 10, of the Constitution of the State of Indiana.

On January 18, Mr. Charles H. Reeve, a Democrat, introduced a resolution in the Senate proposing a constitutional change in the judiciary.

[*Senate Journal, Fiftieth Session, 122.*]

Senate joint resolution No. 15. A joint resolution to amend Article 7, Section 1, of the Constitution.

On January 29, Mr. Francis M. Dice, a Republican, proposed to amend the Constitution by striking out the negro colonization and exclusion article.

[*Senate Journal, Fiftieth Session, 217.*]

Senate joint resolution No. 17. A joint resolution proposing an amendment to the Constitution of the State of Indiana.

All of the foregoing resolutions were referred to the Judiciary Committee; on February 5, the committee made a divided report. The committee had consolidated Senate joint resolutions Nos. 2, 3, 4, 5, 7, 9, 10, 15 and 17 and had prepared substitutes numbered from 1 to 9 inclusive. A majority of the committee recommended that the original resolutions be laid on the table and that the proposed substitutes be printed for the use of the Senate. The first minority report proposed to substitute other amendments for those numbered 3, 5 and 6 in the majority report; a second minority report submitted a proposed substitute for amendment number 1 of the majority report. On February 16, before these resolutions came up for consideration in the Senate, Mr. Charles H. Reeve, a Democrat, introduced a resolution to amend the Constitution by fixing the duration of a regular session at 121 days and a special session at 60 days and this resolution was made a special order for consideration with the other proposed amendments.

[*Senate Journal, Fiftieth Session, 415.*]

Senate joint resolution No. 19. A joint resolution proposing an amendment to Section 29 of Article 4 of the Constitution, and designated as Amendment No. 10.

On February 16 and 17, the Senate Committee of the whole had these proposed amendments under consideration. Proposed amendments were selected from both the minority and the majority reports and the selection was concurred in by the Senate. On February 26, the ten amendments agreed upon were passed to third reading. On February 27, the resolutions came up for third reading. The first amendment extended the right of suffrage to negroes, prescribed residential qualifications for electors and authorized the General Assembly to enact a registration law. Mr. Reeve proposed to amend the amendment by restricting the right of suffrage extended to aliens to white males. The proposed amendment was rejected by a vote of 14-30. The resolution was then adopted by the Senate by a vote of 39-4; it passed the House on March 5 by a vote of 81-2.

[*Senate Journal, Fiftieth Session, 614.*]

Senate joint resolution No. 1. Senate joint resolution amending Section 2 of Article 2 of the Constitution, and prescribing the qualifications of voters.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to-wit:

Amend Section 2 of Article 2 so as to read as follows:

Sec. 2. In all elections not otherwise provided for by the Constitution, every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject, shall be entitled to vote in the township or precinct where he may reside if he shall have been duly registered according to law.

*Resolved,* That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 1.

Amendment No. 2 merely deleted the provision denying the right of suffrage to negroes and mulattoes. It passed the Senate by a vote of 40-1, and the House, on March 3, by a vote of 78-2.

[*Senate Journal, Fiftieth Session, 616.*]

Senate joint resolution No. 2. A joint resolution proposing amendment to Section 5 of Article 2 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the Constitution of the State of Indiana be amended as follows: By striking out the words "no negro or mulatto shall have the right of suffrage," contained in Section 5 of Article 2 of the Constitution.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

Amendment No. 3 fixed the date of the general election on the first Tuesday after the first Monday in November; authorized the General



Assembly to provide for holding township and judicial elections at other times and to enact a registration law. The resolution was adopted by the Senate by a vote of 39-2 and by the House on March 5, by a vote of 78-0.

[*Senate Journal, Fiftieth Session, 616.*]

Senate joint resolution No. 3. A joint resolution proposing amendment to Section 14, Article 2, of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit:

Amend Section 14 of Article 2 to read:

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction by an election to be held for such officers only, at which time no other officers shall be voted for, and shall also provide for the registration of all persons entitled to vote.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3.

Amendment No. 4 provided that the enumeration of voters and the apportionment of representatives should be based on the number of male, instead of white male, inhabitants of the State above the age of twenty-one years. It was adopted by the Senate by a vote of 41-1, and by the House on March 5, by a vote of 71-8.

[*Senate Journal, Fiftieth Session, 617.*]

Senate joint resolution No. 4. A joint resolution proposing amendment to Sections 4 and 5 of Article 4 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the Constitution of the State of Indiana be amended as follows:

Strike out the word "white" from Sections 4 and 5 of Article 4.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4.

Amendment No. 5 authorized the General Assembly to enact local legislation to the extent of grading the compensation of public officers in proportion to population and the necessary services required. The resolution passed the Senate by a vote of 37-3, and the House by a vote of 79-2.

[*Senate Journal, Fiftieth Session, 617.*]

Joint Senate resolution No. 5. A joint resolution proposing amendment to the fourteenth clause of Section 22 of Article 4 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana is proposed, to-wit:

Amend the fourteenth clause of Section 22, of Article 4, to read as follows:

In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to population and the necessary services required.

*Resolved,* That in the submission of this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 5.

Amendment No. 6 struck out the word "inferior" as applied to courts and made possible the creation of superior courts. The resolution was adopted by the Senate by a vote of 38-2, and by the House, on March 5, by a vote of 69-9.

[*Senate Journal, Fiftieth Session, 618.*]

Senate joint resolution No. 6. A joint resolution proposing amendment to Section 1 of Article 7 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment is proposed to the Constitution of the State of Indiana, to-wit:

Amend Section 1 of Article 7 to read:

Section 1. The judicial power of the State shall be vested in a Supreme Court, circuit court, and such other courts as the General Assembly may establish.

*Resolved,* That in the submission of this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 6.

Amendment No. 7 increased the membership of the Supreme Court and divided the judges into three classes so that one-third should retire biennially. The resolution passed the Senate by a vote of 41-3, and the House, on March 5, by a vote of 63-14.

[*Senate Journal, Fiftieth Session, 619.*]

Senate joint resolution No. 7.

*Resolved by the Senate, the House of Representatives concurring,* That Section 2 of Article 7 of the Constitution of the State of Indiana be amended to read as follows:

Section 2. The Supreme Court shall consist of not less than five nor more than seven judges, a majority of whom shall form a quorum. They shall hold their offices for six years, if they shall so long behave well: *Provided*, That the judges elected at the first election after the taking effect of this amendment shall be divided by lots into three classes, as nearly as may be, the fraction being in the last class, and the seats of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years, and the third class at the expiration of six years. So that one-third thereof, as nearly as may be, shall be chosen every two years thereafter.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 7.

Amendment No. 8 extended the restriction of Section 6, Article 10, to cities, towns and townships and thus prohibited all minor political subdivisions of the State from subscribing for stock in any corporation or making any donations thereto or assuming any of their debts. The resolution passed the Senate by a vote of 38-5, and the House on March 5, by a vote of 57-19.

[*Senate Journal, Fiftieth Session, 619.*]

Senate joint resolution No. 8.

*Resolved by the Senate, the House of Representatives concurring*, That the following amendment to the Constitution of the State of Indiana be, and is hereby proposed:

Amend Section 6, Article 10 of the Constitution so as to read as follows:

Section 6. No county, city, town or township shall hereafter subscribe for stock or become a stockholder or owner in whole or in part in any corporation, company or association; nor shall any county, city, town or township donate any money or property to, or assume any debts of, or give, loan, pledge, or otherwise extend its credit to or in aid of any person, association, corporation or company; nor shall the General Assembly ever, in behalf of the State, assume the debts of any county, city, town, township, person, association, company or corporation whatever.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 8.

Amendment No. 9 struck out the article concerning negro exclusion and colonization and prescribed a municipal debt limit. When the proposed amendment was under consideration, Mr. Charles H. Reeve proposed to fix

the debt limit at 3 per cent., which was rejected. The resolution was then adopted by the Senate by a vote of 38-6. On March 13, during the special session, the resolution was rejected by the House by a vote of 40-35. According to the record the resolution was not subsequently considered. On March 14, however, the Speaker announced that he had signed enrolled Senate joint resolution No. 9 and on March 15 it was announced that the President of the Senate had also signed this resolution and it is printed in the laws of the special session at page 85.

[*Senate Journal, Fiftieth Session, 620.*]

Senate joint resolution No. 9.

*Resolved by the Senate, the House of Representatives concurring,*  
That the Constitution of the State of Indiana be amended as follows:

1. Strike out all of the sections of Article 13, and in lieu thereof insert the following: Section 1. No political or municipal corporation in this State shall ever become indebted in any manner, or for any purpose, to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by such corporations shall be void: *Provided*, That in time of war, foreign invasion or other great public calamity, on petition of a majority of the property owners in number and value within the limits of such corporation, the public authorities in their discretion, may incur obligations necessary for the public protection and defense to such amount as may be requested in such petition.

*Resolved*, In submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 9.

Amendment No. 10 fixed the duration of a regular session at 121 days and the special session at sixty days. It passed the Senate by a vote of 33-11, and the House, on March 5, by a vote of 55-19.

[*Senate Journal, Fiftieth Session, 621.*]

Senate joint resolution No. 10. A joint resolution to amend Section 29 of Article 4 of the Constitution of the State of Indiana.

*Resolved by the Senate, the House of Representatives concurring,*  
That the following amendment be, and is hereby proposed to the Constitution of the State of Indiana, to-wit:

Amend Section 29 of Article 4 to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of one hundred and twenty-one days, nor any special session beyond the term of sixty days.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 10.

The resolutions, embracing the proposed amendments, were printed in the session laws of the fiftieth regular session beginning on page 159; and also on pages 162 and 166 and on page 85 of the laws of the special session of 1877; as there given the proposed amendments are identical with the resolutions as set forth in the journals.

**296. Governor Williams Approves Adoption of Constitutional Amendments (March 6, 1877).**

In his message to the special session on March 6, Governor Williams said:

"I congratulate you upon the passage of the joint resolutions proposing amendments to our Constitution. They will doubtless commend themselves to the people and recommend you to their favor upon your return to your homes."

**297. Date of Holding General Elections; Suffrage Qualification; Registration of Voters; Local Laws; Compensation of County and Township Officers (January 6, 1877).**

On January 6, Mr. Inman H. Fowler, a Democrat, introduced a bill in the Senate fixing the time for holding general elections, prescribing the qualifications for suffrage, authorizing the registration of voters and permitting the passage of local laws fixing the compensation of county and township officers. On January 9, the bill was referred to the Committee on Elections; on February 8, the committee reported the bill back to the Senate and recommended that it be indefinitely postponed "for the reason the same proposition was reported on by the Judiciary Committee and passed upon by the Senate," and on February 15 the report was concurred in by the Senate.

*[Senate Journal, Fiftieth Session, 38.]*

Senate bill No. 3. A bill amending Sections 2 and 14, Article 2, and Sections 22 and 23, Article 4 of the Constitution of the State, fixing the time for holding all general elections, prescribing who shall be legal voters, providing for a uniform system of registration of legal voters and providing compensation for county and township officers.



**298. Date of Holding General Elections (January 4, 1877).**

Practically all of the foregoing propositions were introduced in the House, and considered prior to the submission of the Senate measures. On January 4, Mr. Theophilus Crumpacker, a Republican, introduced a resolution to change the date of holding general elections. On January 15, this resolution was referred to the Committee on Elections. On January 24, the Committee recommended that this bill pass. The resolution passed the House on February 2 by a vote of 72-5. On February 3, this resolution was referred to the Judiciary Committee of the Senate, which reported it back on February 8 with the recommendation that it lie on the table. There was no further action.

[*House Journal, Fiftieth Session, 372.*]

House joint resolution No. 1. A joint resolution proposing to amend Section 14 of Article 2 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That Section 14 of Article 2 of the Constitution of the State of Indiana be and the same is hereby amended to read as follows, to-wit:

Section 14. All general elections shall be held on the first Tuesday after the first Monday in November until otherwise provided by law.

*Be it further resolved,* That said proposed amendment shall be entered on the journals of each House of the present legislature, and the same is hereby referred to the General Assembly of the State of Indiana, to be elected at the next general election.

**299. Registration of Voters and Residential Qualifications of Electors (January 6, 1877).**

On January 6, Mr. James W. Lanham, a Republican, introduced a resolution in the House to require a registration of voters and a residence of 60 days in the township or precinct to acquire the right of voting. On January 15, the resolution was referred to the Judiciary Committee, which on January 24 recommended that the measure be adopted. On February 2, the resolution passed the House by a vote of 67-9. The Senate Judiciary Committee, to whom this resolution was referred, made a favorable report, but on February 17 the measure was indefinitely postponed.

[*House Journal, Fiftieth Session, 373.*]

House joint resolution No. 3. A joint resolution proposing to amend Article 2, Section 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to Article 2, Section 2

of the Constitution of the State of Indiana, be and the same is hereby agreed to, and in case said amendment shall be agreed to by a constitutional majority of each house of the next General Assembly, then the same shall be submitted to the people of the State for their adoption or rejection.

Sec. 2. Amend Article 2, Section 2, by striking out "may reside" and inserting in lieu thereof the following: "shall have resided for the sixty days next preceding such election, and when his name shall have been registered, according to such regulations as may be prescribed by law."

### 300. Miscellaneous Amendments to Constitution (January 9, 1877).

On January 9, Mr. James W. Lanham introduced a resolution in the House proposing a series of unspecified amendments to the Constitution. On January 15, the resolution was referred to the Committee on Elections.

*[House Journal, Fiftieth Session, 77.]*

Joint resolution No. 4. A joint resolution proposing amendments to the Constitution of the State.

On January 24, the committee reported the resolution back to the House and recommended that it lie on the table, and in lieu thereof they reported five separate resolutions, numbered 16, 17, 18, 19 and 20. On February 2, the original resolution No. 4 was laid on the table by the House, and the substitutes taken up. Meantime a resolution of instruction had been submitted "to inquire into the expediency of incorporating a provision requiring voters to present a tax receipt," which was laid on the table.

The first proposed amendment merely struck out of Section 2, Article 2, the word "white." The resolution passed the House by a vote of 66-10, and was laid on the table by the Senate.

*[House Journal, Fiftieth Session, 368.]*

House joint resolution No. 16. A joint resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to Section 2 of Article 2 of the Constitution of the State of Indiana is hereby agreed to, and in case the same shall be agreed to by a constitutional majority of each branch of the next General Assembly, then the same shall be submitted to the people of the State for their adoption or rejection.

Sec. 2. Amend Section 2 of Article 2 by striking out of the same the word "white" wherever it occurs.

The second proposed amendment was designed to strike out Section 5 of

Article 2 which denied suffrage to negroes and mulattoes. It passed the House by a vote of 72-4, and was laid on the table in the Senate.

[*House Journal, Fiftieth Session, 369.*]

House joint resolution No. 17. A joint resolution to amend Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to Article 2 of the Constitution of the State of Indiana, is hereby agreed to, and in case the same shall be agreed to by a constitutional majority of the next General Assembly, then the same shall be submitted to the people of the State for their adoption or rejection.

Sec. 2. Amend Article 2 by striking out of the same, the whole of Section 5.

The third proposed amendment changed the Constitution so as to base the enumeration of male inhabitants over the age of twenty-one years on males instead of white males. The resolution passed the House by a vote of 72-3 and was laid on the table by the Senate.

[*House Journal, Fiftieth Session, 370.*]

House joint resolution No. 18. A joint resolution to amend Section 4 of Article 4 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to Section 4 of Article 4 of the Constitution of the State of Indiana, is hereby agreed to, and in case the same shall be agreed to by a constitutional majority of each branch of the next General Assembly, then the same shall be submitted to the people of the State for their adoption or rejection.

Sec. 2. Amend Section 4 of Article 4 by striking out of the same the word "white."

The fourth proposed amendment provided for basing the apportionment of representatives on the male population above the age of twenty-one years, instead of white males, as formerly. The resolution passed the House by a vote of 72-2, and was laid on the table by the Senate.

[*House Journal, Fiftieth Session, 371.*]

House joint resolution No. 19. A joint resolution to amend Section 5 of Article 4 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to Section 5 of Article 4 of the Constitution of the State of Indiana is hereby agreed to,

and, in case the same shall be agreed to by a constitutional majority of each branch of the next General Assembly, then the same shall be submitted to the people of the State for their adoption or rejection.

Sec. 2. Amend Section 5 of Article 4 by striking out of the same the word "white."

The fifth proposed amendment was designed to strike out the negro exclusion and colonization article. It passed the House by a vote of 72-3, and was laid on the table by the Senate.

[*House Journal, Fiftieth Session, 371.*]

House joint resolution No. 20. A joint resolution to amend the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana is hereby agreed to, and in case the same shall be agreed to by a constitutional majority of each branch of the next General Assembly, then the same shall be submitted to the people of the State for their adoption or rejection.

Sec. 2. Amend said constitution by striking out of the same the whole of Article 13.

### 301. Negro Exclusion and Colonization (January 11, 1877).

On January 11, Mr. Justus C. Adams, a Republican, introduced a resolution in the House to repeal the negro exclusion and colonization article. The resolution was laid on the table and apparently was not subsequently considered.

[*House Journal, Fiftieth Session, 102.*]

Joint resolution No. 9. A joint resolution repealing Article 13 of the Constitution of the State of Indiana.

### 302. Issue of State House Bonds (February 5, 1877).

On February 5, Mr. Deforest L. Skinner, a Democrat, introduced a resolution in the Senate to amend the Constitution so as to authorize the General Assembly to issue \$3,000,000 worth of bonds to provide revenue for the construction of the new State House. The resolution was referred to the Judiciary Committee and apparently was not further considered.

[*Senate Journal, Fiftieth Session, 276.*]

Senate joint resolution No. 18. A joint resolution proposing an amendment to the Constitution of the State of Indiana.

**303. Calling a Constitutional Convention (January 6, 1877).**

On January 6, Mr. Byron W. Langdon introduced a bill in the House to provide for the calling of a Constitutional Convention. On January 10, the bill was referred to the Judiciary Committee, which on January 24 made a favorable report. On February 2, this bill, together with House joint resolution No. 4, was considered and the bill passed by a vote of 51-26. On February 5, the bill was referred to the Senate; on February 13, it was referred to the Committee on Elections; on February 20, the committee reported the bill back to the Senate with the recommendation that it lie on the table; and on March 1, this report was concurred in.

*[House Journal, Fiftieth Session, 53.]*

House bill No. 22. A bill to provide for taking the sense of the qualified voters of the State on the calling of a convention to alter, amend, or revise the Constitution of the State.

**304. Duration of a Legislative Session (March 5, 1877).**

On March 5, the day on which the fiftieth regular session expired, Mr. Aaron C. Swayzee introduced a resolution in the House declaring that the constitutional limitation of sixty-one days on legislative sessions meant sixty-one working or week days, Sundays excepted. The House, however, determined to adhere to the legislative construction of this constitutional provision and laid the resolution on the table.

*[House Journal, Fiftieth Session, 989.]*

*Resolved by the House of Representatives of the State of Indiana, the Senate concurring, That the Constitution of the State, in limiting the session of the General Assembly to sixty-one days, refers to, and should be understood to mean, sixty-one working or week days, Sundays excepted.*

*Resolved, That the members and employes of the General Assembly, except those who live in the city, be and they are hereby allowed \$1.50 per day Sabbath day included in the session for expenses.*

**THE FIFTY-FIRST GENERAL ASSEMBLY OF 1879 AND THE SPECIAL SESSION OF MARCH 11-31, 1879.**

The personnel of the General Assembly of 1879 was as follows: Senate 23 Republicans, 24 Democrats and 3 Greenbacks; House, 39 Republicans, 50 Democrats and 11 Greenbacks. The special session was called to complete the appropriation measures and to enact other important legislation. The most important work of the session was the adoption of the constitutional amendments proposed in 1877 and their submission to the people. One unsuccessful attempt was also made to submit the proposition of calling a constitutional convention. Scores of petitions relative to the fees and



salaries of public officers and to the manufacture and sale of intoxicating liquors were presented. Aside from the amendment actually proposed concerning the grading of the compensation of public officers, no constitutional measures in relation to the fees and salaries of public officers were asked for, but a rather comprehensive fees and salaries act was adopted. The scope of this question, as well as the necessity of obtaining a constitutional amendment authorizing the enactment of laws, is pretty clearly set forth in the following resolution, introduced by Mr. James Osborn of Elkhart on February 12.

**305. Fees and Salaries of Public Officers (February 12, 1879).**

*[House Journal, Fifty-first Session, 464.]*

WHEREAS, The material reduction of the fees and compensation of county officers was made the paramount issue before the people in the last political campaign; and

WHEREAS, All parties stand pledged to the people to bring about at this session of the General Assembly such material reduction and thereby relieve the people of a portion of the burdens yet resting upon them, the results of the high prices of the preceding years; and

WHEREAS, More than one-half of the session has expired and and as yet no general discussion has been had upon the subject by which the members might be able to compare views and arrive at some basis upon which to make such reduction which will be just toward the officers and beneficial to the people; therefore be it

*Resolved*, That in order to avoid the almost universal habit of charging constructive fees not in truth and spirit warranted by the statute, which has obtained among public officers of late, and in order that the people may at all times know just what they are paying their servants for the transaction of their business, and may intelligently reduce or increase such pay so as to do justice to all, it is the duty of this General Assembly, and in accordance with the best interests of the people, that the pay and compensation of county auditors, treasurers, sheriffs and clerks be established by permanent and fixed salaries, and graded among the several counties according to population, and that the general features of House bill No. 113 should be carried out and engrafted into the law, making such changes, if necessary, as to amounts to be paid or received as will afford the officers a fair compensation for their services, and bring to the treasury a proper sum for the services rendered to litigants and others having business done by the public officers.

As an amendment to the foregoing, Mr. Thomas J. Lindley offered the following:

[*House Journal, Fifty-first Session, 465.*]

And provided that the provisions of the resolution shall also apply to the compensation of State officers, and provided further that the Committee on Fees and Salaries are directed to report a bill embracing the points enunciated herein at an early day.

And to this amendment, Mr. John Overmyer offered the following:

[*House Journal, Fifty-first Session, 465.*]

That in view of the facts recited in the preamble to said resolution it is the duty of the General Assembly to provide at once for the submission of the constitutional amendments to the people.

### 306. Prohibiting Sale of Intoxicating Liquors (March, 1879).

On the temperance question, the only petitions precisely to the point were offered in the Senate on March 12 by Mr. Benjamin Shirk and in the House by Mr. Charles S. Hubbard on March 10. This resolution had been adopted by the yearly meeting of Friends and memorialized the General Assembly to submit a constitutional amendment to prohibit the sale of intoxicating liquors.

[*House Journal, Fifty-first Session, 1044.*]

Memorial of Western Yearly Meeting of Friends Held at Plainfield, Indiana, from the Thirteenth to the Nineteenth of Ninth Month, 1878, on Constitutional Amendment to Prevent Intemperance.

To the General Assembly of the State of Indiana:

Believing that the use of intoxicating liquors is one of the most fruitful causes of evil, morally, physically and financially, in our country, and that it is without any corresponding benefit, either to the individual or the State, we respectfully ask your honorable body, at your present session, to take measures looking to the adoption of a constitutional amendment which shall embrace the following ideas, to-wit:

The General Assembly of the State shall not pass any law allowing or licensing the sale of intoxicating liquors; but it shall pass such laws as will protect society, the morals of the people, and parties injured from the result of their sale.

By direction of the meeting.

AMOS DOAN, Clerk.

**307. Governor Williams Recommends Adoption of Pending Amendments (January 10, 1879).**

In his biennial message to the General Assembly on January 10, Governor Williams urged the adoption of the proposed constitutional amendments pending from the session of 1877, and their speedy submission to the people.

*[House Journal, Fifty-first Session, 31.]*

Joint resolutions proposing nine important amendments to the Constitution were passed, and the proposed amendments, having been agreed to by a majority of the members elected to each of the two Houses, were entered upon their journals and referred to the body now constituted of yourselves. It is desired that you take early action upon this pending business, that the proposed amendments, if agreed to by a majority of all the members elected to each house, may be at once submitted to the electors of the State, and if ratified by them, be declared parts of our fundamental law, upon which you may proceed to enact a series of wholesome laws now urgently demanded by the interests of our people.

**308. Method of Procedure in Maturing Pending Amendments (January, 1879).**

The General Assembly of 1879 adopted a new method of procedure in bringing before the legislature the constitutional amendments which had been adopted by the last preceding session. They were treated distinctly as unfinished business and were not formally reintroduced. On January 9, on motion of Mr. J. D. Sarninghausen, the Senate adopted a resolution to the effect that: "WHEREAS, Several amendments to the Constitution of the State of Indiana passed during the last regular session of the General Assembly, and under the Constitution must be voted on for the second time during the present regular session; therefore, *Resolved*, That the consideration of and the vote on those amendments be made the special order of the day for next Tuesday, January 14, 1879, at 2 o'clock P. M." On January 14, Mr. Charles H. Reeve secured the adoption of a motion which committed the Senate to a definite course of procedure in disposing of the pending amendments. This motion proposed "that the proposed amendment to the Constitution, made the special order for this hour, be read the first time now, the second time to-morrow at 10 o'clock, and the third time the day following." The secretary of the Senate was then sent to the office of the Secretary of State to procure the enrolled copies of the proposed amendments. A short time later, the Lieutenant Governor announced that the proposed constitutional amendments passed by the last General Assembly had been placed in his hands. It was then ordered "that it be entered on the Journal that the Secretary of State produces and lays before the Senate enrolled copies of the proposed constitutional amendments for their action." Joint

resolutions Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 were then read in their numerical order and are set out in full on the Senate Journal. On January 15, the Lieutenant Governor "directed the reading of the proposed amendments to the Constitution adopted by the last General Assembly." The resolutions were then passed to third reading. After the second reading of the resolutions, Mr. B. H. Burrell moved to amend the first resolution by striking out the expression, "If he shall have been duly registered according to law." Whereupon, Mr. Francis M. Dice raised the following point of order: "That while amendments to the Constitution of the State are waiting the action of a succeeding General Assembly, no additional amendment or amendments shall be proposed, and that the amendment proposed by Senator Burrell was in effect, a new and additional amendment." This point of order was sustained by the Chair. On January 16, the resolutions came up on third reading and were finally disposed of.

When joint resolution No. 1 came up for final consideration, an attempt was made to lay the measure on the table, but was defeated by a vote of 12-36; an attempt to indefinitely postpone was lost by a vote of 15-34;\* the demand for the previous question was sustained by a vote of 33-11, and the amendment was then adopted by a vote of 37-12. This resolution, together with the other eight resolutions constituting the group, were reported to the House on January 17 and were taken up for final consideration on January 30 and 31 and disposed of. Joint resolution No. 1 was adopted by the House by a vote of 60-34.

### 309. Residential Qualifications for Suffrage.

[*Laws, Fifty-first Session, 51.*]

Senate joint resolution amending Section 2 of Article 2 of the Constitution, and prescribing the qualifications of voters.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to-wit: Amend Section 2 of Article 2, so as to read as follows: Section 2. In all elections, not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote

\*((The measure to postpone was tabled by the vote of 34-15.))

in the township or precinct where he may reside, if he shall have been duly registered according to law.

*Resolved*, That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 1.

### 310. Political Rights of Negroes and Mulattoes.

Joint resolution No. 2 was adopted by the Senate by a vote of 43-0, by the House by a vote of 95-1.

[*Laws, Fifty-first Session, 52.*]

A joint resolution proposing amendment to Section 5 of Article 2 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring*, That the Constitution of the State of Indiana be amended as follows:

By striking out the words "no negro or mulatto shall have the right of suffrage," contained in Section 5 of Article 2 of the Constitution.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as "Amendment No. 2."

Joint resolution No. 4 passed the Senate by a vote of 47-1 and the House by a vote of 89-3.

[*Laws, Fifty-first Session, 53.*]

A joint resolution proposing amendment to Sections 4 and 5 of Article 4 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring*, That the Constitution of the State of Indiana be amended as follows:

Strike the word "white" from Sections 4 and 5 of Article 4.

*Resolved*, That in submitting this amendment to the electors of the State to be voted upon, it shall be designated as Amendment No. 4.

### 311. Date of General Election.

Joint resolution No. 3 was adopted by the Senate by a vote of 34-14 and by the House by a vote of 61-34.



[*Laws, Fifty-first Session, 52.*]

A joint resolution proposing amendment to Section 14 of Article 2 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to-wit:

Amend Section 14 of Article 2 to read: Section 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officers shall be voted for; and shall also provide for the registration of all persons entitled to vote.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3.

### 312. Fees and Salaries of Public Officers.

Joint resolution No. 5 passed the Senate by a vote of 47-2 and the House by a vote of 93-1.

[*Laws, Fifty-first Session, 53.*]

A joint resolution proposing amendment to the fourteenth clause of Section 22 of Article 4 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana is proposed, to-wit:

Amend the fourteenth clause of Section 22 of Article 4 to read as follows:

In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population, and the necessary services required.

*Resolved*, That in the submission of this amendment to the electors of the State, to be voted on, it shall be designated as Amendment No. 5.

**313. Judicial System of the State.**

Joint resolution No. 6 passed the Senate by a vote of 46-2, and the House by a vote of 66-29.

[*Laws, Fifty-first Session, 53.*]

A joint resolution proposing amendment to Section 1 of Article 7 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment is proposed to the Constitution of the State of Indiana, to-wit: Amend Section 1 of Article 7 to read:

Section 1. The judicial power of the State shall be vested in a Supreme Court, circuit courts, and such other courts as the General Assembly may establish.

*Resolved,* That in the submission of this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 6.

**314. Personnel of Supreme Court.**

Joint resolution No. 7 passed the Senate by a vote of 41-7, but was defeated in the House by a vote of 26-69.

[*House Journal, Fifty-first Session, 284.*]

Enrolled Senate joint resolution No. 7.

*Resolved by the Senate, the House of Representatives concurring,* That the second section of the seventh article of the Constitution of the State of Indiana be amended to read as follows: Section 2. The Supreme Court shall consist of not less than five nor more than seven judges, a majority of whom shall form a quorum. They shall hold their offices for six years, if they shall so long behave well: *Provided,* That the judges elected at the first election after the taking effect of this amendment shall be divided by lot into three classes, as nearly as may be—the fraction being in the last class; and the seats of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years, the third class at the expiration of six years, so that one-third thereof, as nearly as may be, shall be chosen every two years thereafter.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 7.

### 315. Municipal Debt Limit.

Joint resolution No. 9 passed the Senate by a vote of 48-0 and the House by a vote of 81-11.

[*Laws, Fifty-first Session, 54.*]

*Resolved by the Senate, the House of Representatives concurring*, That the Constitution of the State of Indiana be amended as follows:

1. Strike out all the sections of the thirteenth article, and in lieu thereof insert the following:

Section 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose to an amount, in the aggregate, exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount, given by such corporations, shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such amount as may be requested in such petition.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as "Amendment No. 9."

### 316. Duration of Regular Session of the General Assembly.

Joint resolution No. 10 passed the Senate by a vote of 44-5, but was rejected in the House by a vote of 23-70.

[*House Journal, Fifty-first Session, 287.*]

Senate joint resolution No. 10.

*Resolved by the Senate the House of Representatives concurring*, That the following amendment be and is hereby proposed to the

Constitution of the State of Indiana, to-wit: Amend Section 29 of Article 4 to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of one hundred and twenty-one days, nor any special session beyond the term of sixty days.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 10.

**317. Submission of Constitutional Amendments to Electors (March 10, 1879).**

On February 17, some two weeks after the proposed constitutional amendments had been finally adopted by both houses, Mr. S. M. Taylor, a Republican, introduced a bill in the Senate to provide for the submission of the constitutional amendments to the people. The bill was referred to the Judiciary Committee, which on February 26, reported the bill back to the Senate with certain amendments. Either the original bill or the amendments thereto proposed by the committee provided that the election at which the proposed amendments should be submitted to the people should be held on the first Monday of April, 1880; Mr. Addison C. Harris proposed to change the date of this election to the second Tuesday in October, 1880, but the proposition was rejected. All of the amendments proposed by the committee were concurred in, the constitutional rule was suspended by a vote of 46-3, and the bill passed the Senate by a vote of 40-7. The bill was reported to the House on March 1, the rules were suspended by a vote of 65-23 and the bill was read a first time. On March 3, the bill was read a second time and referred to the Judiciary Committee. On March 6, the committee reported the bill back to the House with a few unimportant changes which were concurred in. The rules were suspended by a vote of 64-33 and the bill was put upon its final passage. An attempt to lay the bill on the table was lost by a vote of 23-67; a motion to strike out the enacting clause was rejected by a vote of 18-64; a motion to table a motion invoking the previous question was lost by a vote of 21-76; an attempt to adjourn was lost by a vote of 30-66; the vote on the question of putting the main question was sustained by a vote of 77-18; the House refused to reconsider the vote on the question of putting the main question by a vote of 16-72. The bill was then passed by a vote of 75-21.

[*Laws, Fifty-first Session, 25.*]

AN ACT providing for the submission to the electors of the State of Indiana for ratification the constitutional amendments proposed to and adopted by the General Assemblies of said State at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others; providing penalties for violations thereof, and other provisions relating to the subject matter.

WHEREAS, The Senate of the General Assembly, in the year 1877, proposed the amendments to the Constitution herein set forth, and provided that in the submission thereof to the electors of the State to be voted on, they should be numbered as follows

(No. 1.)

Amend section 2 of Article 2 so as to read as follows: Section 2. In all elections, not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

(No. 2.)

By striking out the words, "no negro or mulatto shall have the right of suffrage," contained in section 5 of the second article of the Constitution.

(No. 3.)

Amend section 14 of the second article to read: Section 14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be



voted for; and shall also provide for the registration of all persons entitled to vote.

(No. 4.)

Strike the word "white" from sections 4 and 5 of Article 4.

(No. 5.)

Amend the fourteenth clause of section 22 of article 4 to read as follows: In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required.

(No. 6.)

Amend section 1 of the 7th article to read: Section 1. The judicial power of the State shall be vested in a Supreme Court, circuit courts, and such other courts as the General Assembly may establish.

(No. 9.)

Strike out all the sections of the thirteenth article, and in lieu thereof insert the following: Section 1. No political or municipal corporation in this State, shall ever become indebted, in any manner or for any purpose, to an amount, in the aggregate, exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment, for State and county taxes, previous to the incurring of such indebtedness, and all bond or obligations, in excess of such amount, given by such corporations, shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such amount as may be requested in such petition; and

WHEREAS, Each of the said proposed amendments was agreed to by a majority of the members elected to each of the two houses of the last General Assembly, and they were, with the yeas and nays thereon, entered on their journals, and referred to the present General Assembly; and

WHEREAS, In the present General Assembly, the said proposed amendments were agreed to by a majority of all the members elected to each house; therefore,

Section 1. *Be it enacted by the General Assembly of the State of*

*Indiana*, That each of said proposed amendments shall be submitted to the electors of the State, at the election to be held on the first Monday of April, 1880, for their adoption or rejection.

Sec. 2. The Secretary of State shall procure ballots of blue paper, on each of which shall be printed the proposed amendments, and below each amendment shall be printed the word "yes," in one line, and in another line the word "no." He shall, at least thirty days before said election, send to the sheriff of each county a number of ballots, not less than three times the number of voters therein, and the sheriff shall, immediately after receiving the ballots, deliver to the trustee of each township a number of said ballots, not less than double the number of voters in the township. It shall be the duty of each trustee to see that a number of said ballots, not less than double the number of voters in each precinct in his township, be in the hands of the inspector thereof at the opening of the polls. The inspector shall, on request, deliver to each elector, at the time of the election, one of said ballots. The secretary shall also procure and furnish, as other election papers are furnished, the blanks for the tally sheets and certificates required by this act.

Sec. 3. Any qualified elector, at the time he votes for officers, or at such election, if he does not vote for any officer, may vote for or against any amendment, by depositing one of said ballots in the ballot box. If he intends to vote for any amendment, he shall leave thereunder the word "yes," and erase the word "no," by drawing a line across it, or otherwise. If he intends to vote against any amendment, the word "yes" shall, in like manner, be stricken out, and the word "no" shall be left, and if both words are allowed to remain, without either of them being so erased, the vote shall not be counted either way. If a majority of the electors shall thus ratify any of said amendments, the same shall be a part of the Constitution; but no elector shall vote more than once, and if he votes for any officer, shall at the same time vote on such amendments.

Sec. 4. The law of this State governing general elections, as to the return and canvassing of votes cast for the said constitutional amendments, shall be observed by the several boards of election, in making return and canvass of votes cast for or against said amendments, so far as they may be applicable, modified however, as to return of certificates to correspond with the time in this act provided.

Sec. 5. The board of election of each precinct shall count the

votes cast for and against each amendment, and certify the number, over their signatures or the signatures of the majority of them, to the clerk of the circuit court, within five days after the election. The clerk shall, within ten days thereafter, ascertain the total vote in his county, for and against each amendment, and certify the same to the Secretary of State. The Secretary of State shall, within two months after the election, determine the total vote in the State, for and against each amendment, and certify the same to the Governor. And the Governor shall immediately issue and publish his proclamation declaring the number of votes for and against each amendment. The amendments, except on the ballot, may be designated by numbers, as in the preamble of this act.

Sec. 6. Any officer violating any of the provisions of this act, or failing to discharge any duty by this act imposed on him, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum, not exceeding one thousand dollars, to which may be added imprisonment in the county jail, for any period not exceeding six months.

Sec. 7. If any elector shall cast, or personally offer to attempt to cast more than one ballot, at such election, for or against any of the constitutional amendments, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum, not exceeding five hundred dollars, to which may be added imprisonment in the county jail, not exceeding six months. If any person shall vote or offer to vote on any of said amendments, without being a qualified elector in the precinct in which he so votes or offers to vote, he shall be liable to all the pains and penalties provided by law for the like offense at a general election.

Sec. 8. The Secretary of State shall be allowed the actual expenses of procuring the ballots, tally sheets, and certificates, and expenses of distributing the same, to be audited by the Auditor of State, and paid out of the state treasury. The sheriff of each county shall be allowed for his services ten dollars, to be paid out of the county treasury. The other officers shall be paid from the township fund, for their services, for the time engaged, as in other cases.

Approved, March 10, 1879.

**318. Consideration of Pending Amendments in House (January 14, 1879).**

In the meantime all of the foregoing resolutions had been considered by the House prior to the submission of the Senate amendments. On January

10, the House adopted a resolution requesting the Secretary of State "to furnish to the Speaker of this House a certified copy of each of the enrolled resolutions proposing amendments to the Constitution of the State of Indiana on file in his office, and which passed the Senate and House at the last session of the General Assembly." The procedure in securing consideration of the pending constitutional amendments in the House was according to the practice which had heretofore been followed; that is the pending propositions were introduced as new measures and were advanced according to the usual legislative procedure. Accordingly, these resolutions were introduced by Mr. Thomas M. Kirkpatrick, a Republican, on January 14, and were made a special order for consideration by the committee of the whole House on January 16. On January 16, the enrolled copies of the resolutions proposing constitutional amendments had not been received, and the House thereupon adopted a resolution requesting the Secretary of State to certify to the House "the joint resolutions proposing amendments to the Constitution of the State of Indiana." To this request, on January 17, the Secretary of State replied that he was unable to furnish the certified copies of these resolutions "for the reason that by a resolution of the Senate I have furnished to that body the original amendments." On the same day, the Senate resolutions were submitted to the House for its action, and the consideration of the House resolutions was discontinued. The resolutions as introduced by Mr. Kirkpatrick are as follows:

[*House Journal, Fifty-first Session, 69.*]

Joint Resolution No. 3. A joint resolution agreeing to and adopting amendments proposed to the Constitution, by the last General Assembly, by amending Section 2, of Article 2, and prescribing the qualification of voters.

Joint resolution No. 4 (Senate). A joint resolution agreeing to and adopting an amendment to the Constitution by the last General Assembly, by amending Section 5, of Article 2, by striking out the words "no negro or mulatto" shall have the right of suffrage.

Joint resolution No. 5. A joint resolution, agreeing to and adopting an amendment proposed to the Constitution, by the last General Assembly, by amending Section 14, of Article 2, in relation to elections, and the time of holding the same.

Joint resolution No. 6 (Senate). A joint resolution agreeing to and adopting an amendment proposed to the Constitution, by the last General Assembly, by striking the word "white" from Sections 4 and 5 of Article 4.

Joint Resolution No. 7. A joint resolution agreeing to and adopting an amendment proposed to the Constitution, by the last General Assembly, by amending the fourteenth clause of Section 22, of Article 4, in relation to fees and salaries.

Joint resolution No. 8. A joint resolution agreeing to and adopting an amendment proposed to the Constitution, by the last General Assembly, by amending Section 1, of Article 7, in relation to the courts in which the judicial power of the State shall be vested.

Joint resolution No. 9. A joint resolution agreeing to and adopting an amendment to the Constitution, by the last General Assembly, by amending



Section 2, of Article 7, in relation to the number of judges of the Supreme Court, and the mode of their election.

Joint resolution No. 10. A joint resolution agreeing to and adopting an amendment proposed to the Constitution, by the last General Assembly, by striking out all of the sections of the thirteenth article and inserting therefor a section in relation to municipal corporations and prescribing the limit of their indebtedness.

Joint Resolution No. 11. A joint resolution agreeing to and adopting an amendment proposed to the Constitution by the last General Assembly, by amending Section 29 of Article 4, in relation to the compensation of members of the General Assembly, and fixing the length of the sessions thereof.

### 319. Submission of Pending Amendments to Electors (February 1, 1879).

A bill was also introduced in the House on February 1, by Mr. John B. Conner to provide for the submission of the proposed amendments to the electors. On February 3, the bill was referred to the Committee on Elections. On February 6, the committee reported back the following bill as a substitute.

*[House Journal, Fifty-first Session, 372.]*

That the several proposed amendments to the Constitution passed and proposed by the fiftieth General Assembly and agreed to by the fifty-first General Assembly, and numbered respectively 1, 2, 3, 4, 5, 6, and 9, shall be submitted to the electors of the State at the regular township elections to be held on the first Monday in April in the year 1880; and the Secretary of State is hereby authorized to procure and cause to be distributed to each township trustee in the State a sufficient number of ballots for such township, not less in number than double the number of votes cast therein for Secretary of State at the last general election in October, 1878, upon each of such ballots he shall cause to be accurately printed all of the said proposed constitutional amendments, which shall be numbered thereon in their order, such number being immediately above the proposed amendment to which it refers. Immediately below each of said proposed amendments there shall be printed the following words "Upon the above proposed amendment number (giving the proper number) I vote" (leaving a blank space sufficient to write the word "no" or "yes" as the voter desires). Each of such ballots shall have printed at the head or top the following words: "The proposed constitutional amendment," and upon the outside thereof, so that they may be visible when the ballot is folded, shall be printed the following words. "Constitutional amendment." Each and every legally qualified voter at said township election may at the polls where he is entitled to



vote deposit one of the said ballots in the ballot box and no more, at the same time and under the same regulations as he may then be entitled to cast his ballot for the township trustees at such election, and such voter may so vote for or against each of said amendments by writing in the proper place the words "no" or "yes" as the case may be. The board of judges shall count the votes so given.

The board of judges shall count the votes so given for and against each of said proposed amendments. That is, when in the proper place the word no shall be written they shall count one vote against that proposed amendment, and when in the proper place the word yes shall be written they shall count one vote for that proposed amendment designating each one by its proper number, and they shall certify the result into the clerk's office of the county in the same manner and under the same regulations as may be provided by law for certifying and returning the result of the election of the township trustees when voted for, and the clerk shall certify and transmit the result of the vote in his county to the Secretary of State within five days after receiving such result, in the same manner that he is now required to certify and transmit the votes for State officers. And the Secretary of State shall certify the result to the Governor in the same manner he is now required to certify the result of the vote for State officers, and the Governor shall by proclamation to be published as he may direct declare the result and if the majority of the votes so given shall be for any or either of said proposed amendments, then such amendment shall be deemed and declared to be adopted, and shall become from the date of its adoption a part of the Constitution, or the parts of the Constitution referred to in such amendment, shall be deemed to be amended or stricken out as the case may be.

By a vote of 52-43, the report was laid on the table. Amendments were then proposed to the original bill. The date of the election was fixed on the first Tuesday in March, 1879, by a vote of 50-43. An attempt to change this date to the first Monday in April, 1880, was lost by a vote of 41-53. The House also refused to fix the election on the second Tuesday in October, 1879, by a vote of 18-76. The bill was then submitted to the Judiciary Committee, by a vote of 49-43, with instructions to report the bill back the following morning. On February 7, the Judiciary Committee reported the bill with several amendments, including the following relative to the method of voting.

*[House Journal, Fifty-first Session, 387.]*

..... And the Secretary of State is hereby authorized and required to procure and cause to be distributed to each of the sheriffs

in the State, who shall distribute to the township trustees, a sufficient number of ballots for each township, not less in number than double the number of votes cast therein for Secretary of State at the last general election in October, 1878. Upon each of said ballots he shall cause to be accurately printed all of the said proposed constitutional amendments, which shall be numbered thereon in their order, such number being immediately above the proposed amendment to which it refers. Immediately below each of said proposed amendments there shall be printed the following words: "Upon the above proposed amendment, numbered —, (giving the proper number) I vote—," (leaving a blank space sufficient to write the words "yes," or "no," as the voter desires). Each of said ballots shall have printed at the head, or top, the following words: "The proposed constitutional amendments." Each and every legally qualified voter may deposit one of said ballots in the ballot box at the polls at which he is legally entitled to vote, and such voter may vote for or against each of the proposed amendments by writing in the proper place the words "yes," or "no," as the case may be. The Governor shall issue his writ directed to the sheriff of each county, stating therein the cause and object of such election, and the day on which it is to be held; and each of the said sheriffs shall give ten days' notice thereof by causing the said writ to be published in some newspaper of general circulation in his county, or, in case there is no such newspaper, then by posting a notice thereof at the voting places in each township.

The report of the committee was concurred in, the rules were suspended by a vote of 50-46, the bill was placed upon its final passage, and failed for want of a constitutional majority, the vote being 48-46. The Senate bill was now being matured and consequently no further action was had on this bill.

[*House Journal, Fifty-first Session, 308.*]

House bill No. 421. An act to provide for the submission to the qualified electors of this State the proper amendments to the Constitution of the State.

### **320. Municipal Debt Limit (January 20, 1879).**

A very interesting and significant commentary on the probable effects of the operation of the proposed constitutional amendment fixing the municipal debt limit at 2 per cent is contained in a resolution of Mr. Charles H. Reeve, introduced in the Senate on January 20. After setting forth the injurious effect of this proposed amendment, Mr. Reeve's resolution proposed to defer the submission of the amendment until the general election of 1880,

regardless of the date when the other amendments should be submitted. The resolution was laid on the table and not subsequently considered.

[*Senate Journal, Fifty-first Session, 97.*]

*Resolved by the Senate the House of Representatives concurring therein*, That inasmuch as important public works have been commenced by towns and cities in this State for supplying of water and other public necessities, the suspension of which for want of funds, or inability to issue bonds, would result in irreparable loss and injury, and the immediate approval, by the electors of the State of the constitutional amendment No. 9, limiting taxation to two per cent may work much injury; therefore, in submitting to the electors such amendments as may be agreed to by the present General Assembly, the said amendment to the constitution, No. 9, shall be voted upon by the electors at the general election in 1880, and not before, without regard to the time when any other of the proposed amendments shall be submitted. And in providing for the submission of said amendments to the electors, the General Assembly shall provide as in this resolution is declared, for the submission of said Amendment No. 9.

**321. Duration of a Legislative Session (January 10 and 23, 1879).**

Resolutions were introduced in the Senate on January 10, by Mr. W. H. Ragan, and in the House on January 23, by Mr. Taylor of LaGrange, identical in phraseology, requesting the Attorney-General to use his authority in declaring that a session of the General Assembly, as limited by the Constitution should be construed to continue for sixty-one working days, exclusive of Sundays. The resolution which was introduced in the Senate was laid on the table by a vote of 40-10, and the House resolution was rejected without vote.

[*Senate Journal, Fifty-first Session, 15.*]

WHEREAS, In the opinion of the Senate, based upon the existing fact that each of the last three sessions of the General Assembly have proven too short for the work necessarily demanding attention, which fact has in each case referred to rendered a called session necessary, thus involving a great additional expense; and

WHEREAS, The opinion prevails to a certain extent throughout the State, as well as in the minds of Senators upon this floor, that the present construction put upon section twenty-nine (29), of article four (4), of the Constitution, that makes it include Sundays in the sixty-one days fixed as the constitutional limit of a regular

session of the General Assembly is wrong, and should be so declared by the proper authorities; therefore, be it

*Resolved by the Senate, the House of Representatives concurring therein,* That a committee consisting of three Senators and a like number of Representatives be appointed, whose duty it shall be to present this subject to the Attorney-General with the view of getting his authority to extend this and all future regular sessions of the General Assembly under the present Constitution, to include sixty-one working days, for which officers, members and employes will only be entitled to draw pay.

### 322. Cumulative Voting (January 16, 1879).

The following resolution, proposing to establish a system of cumulative voting for State senators and representatives, was introduced in the House on January 16.

*[House Journal, Fifty-first Session, 117.]*

*Resolved,* That the Committee on the Judiciary be and they are hereby requested and directed to inquire into and report to this House whether, in their opinion, an act can be passed by the General Assembly that would be constitutional, providing for cumulative voting for Senators and Representatives of the General Assembly, and that they report at an early day.

### 323. Calling a Constitutional Convention (February 10, 1879).

On February 10, Mr. Jonathan W. Gordon, a Republican, introduced a bill in the House to provide for calling a constitutional convention. On February 12, the bill was read a second time and referred to the Judiciary Committee and was apparently never reported back to the House.

*[House Journal, Fifty-first Session, 426.]*

House bill No. 534. A bill for an act to provide for taking the sense of the qualified voters of this State upon calling a convention to revise, alter and amend the Constitution of the State.

### 324. The Governor's Proclamation Declaring the Vote on the Proposed Amendments (April 28, 1879).

The seven constitutional amendments which had been agreed to by the General Assemblies of 1877 and 1879 were submitted to the electors for ratification at the regular spring election for township officers held on April 5, 1880, under the provisions of the act of March 10, 1879. This act also provided that the Secretary of State should "determine the total vote in the State, for and against each amendment, and certify the same to the Governor;"



and the Governor was then required to "issue and publish his proclamation declaring the number of votes for and against each amendment." On April 28, in conformity with this provision, the Governor issued the following proclamation. See Appendix VIII.\*

*[Secretary of State's Report for 1880, 96.]*

A Proclamation declaring the number of votes for and against each amendment to the Constitution proposed and submitted to the electors of the State, at the election held on the first Monday of April, 1880, for their adoption or rejection:

THE STATE OF INDIANA,  
Executive Department.

To the People of Indiana:

In compliance with the provisions of an act approved March 10, 1879, entitled "An Act providing for the submission to the electors of the State of Indiana for ratification, the Constitutional Amendments, proposed to and adopted by the General Assemblies of said State at the sessions of 1877 and 1879, prescribing certain duties of officers, of election and others, providing penalties for violations thereof, and other provisions relating to the subject matter," it is hereby announced and proclaimed, that at the election held on the first Monday of April, 1880, the votes for and against the several amendments submitted were as follows:

For number one, 169,479 votes, against 152,363 votes;  
For number two, 177,542 votes, against 139,002 votes;  
For number three, 174,400 votes, against 144,812 votes;  
For number four, 176,320 votes, against 136,279 votes;  
For number five, 181,887 votes, against 136,177 votes;  
For number six, 175,612 votes, against 141,296 votes;  
For number nine, 176,981 votes, against 126,999 votes,

as shown by a certificate of the Secretary of State, this day made to me, and by certificates of the clerks of the circuit courts on file in his office.

(SEAL) WITNESS the seal of the State and the signature of  
the Governor, at Indianapolis, this 28th day of April,  
1880.

By the Governor:  
JAMES D. WILLIAMS.

J. G. SHANKLIN, Secretary of State.

\* ((Appendix totals disagree with totals in report below.))



**325. The State v. Swift—Amendments of 1880 Held not Adopted (May, 1880).**

Article 16 of the Constitution provides that a proposed amendment to the Constitution shall be considered adopted if it receives the affirmative votes of a majority of the electors of the State. Now the total number of votes cast at the April election of 1880 for township officers was 380,771; the total number of electors in the State according to the official enumeration taken in 1877 was 451,028, and the total vote cast for governor in 1876 was 434,006. The affirmative vote on the seven propositions submitted ranged from 169,000 to 181,000, and there were more votes cast for each amendment than against it, the majority ranging from 17,000 to 49,000. A majority of the votes cast at the April election would be 190,236; a majority of the whole number of electors of the State according to the official enumeration of 1877 would be 225,515; and a majority of the vote cast for Governor in 1876 was 217,004. Obviously, none of the amendments submitted had obtained a majority of the votes of the electors of the State and the question arose as to whether they had been adopted. Two theories were advanced to explain the language used in the Constitution. One theory contended that a majority of the electors meant a majority of those voting on the amendments. This was the position taken by the Indianapolis Journal. The other theory, and undoubtedly the sound one, held that a majority of the electors meant a majority of the actual number of voters of the State. The act of 1879 neither authorized nor required the Governor to issue his proclamation declaring the amendments in force, but it was generally understood that the Governor's proclamation announcing the official vote on the amendments was a formal announcement of the adoption of the amendments and their incorporation in the Constitution. Several of these amendments were self-executing, others required statute law to carry them into effect. The first amendment, prescribing residential qualifications for electors, was self-executing and the press of the State announced that at the ensuing municipal elections to be held on May 4, 1880, no person would be allowed to vote who did not fulfill all the requirements set forth in this amendment. A test case which originated in New Albany at the spring elections was determined by the Supreme Court at its May term, 1880. The opinion of the court was written by Chief Justice Biddle and Judges Niblack and Scott filed dissenting opinions. The chief points decided in this case were as follows: (1) The Wabash and Erie Canal amendment had been regularly adopted, had become *res adjudicata*, and was a vital and fully operating part of the Constitution. (2) A proposed amendment of the Constitution, to become a part of the Constitution, must be ratified by the votes of a majority of the electors of the State. (3) The General Assembly may provide that the whole number of votes cast at the election at which an amendment is submitted may be taken as the whole number of electors of the State at that time. (4) The amendments submitted in 1880 were neither ratified nor rejected; hence they were still pending, and under a valid statute might be submitted again. In regard to the Canal amendment, the decision held that in 1873 there was but the single question of the ratification or rejection of the amendment submitted to the electors; the Governor and Secretary of State were authorized to declare the result of the election, and the Governor was authorized to proclaim the amendment ratified. "The Governor did so proclaim, and no one ques-

tioned the decision. The question is therefore settled." The vote cast in favor of this amendment was 158,400 and the vote cast against the amendment was 1030. The analogies cited to prove that a majority of the electors of the State was required to ratify an amendment were the following: (1) By the terms of the Enabling Act, a majority of the whole number of delegates was necessary to decide upon the expediency of adopting the Constitution of 1816. (2) A majority of all the votes polled at the election was required to adopt the Constitution of 1851. (3) A majority of all the votes cast was necessary to ratify Article 13 of the Constitution of 1851, which was submitted as a separate proposition. (4) It requires the vote of a majority of the members elected to each of the two houses of the General Assembly to propose amendments to the Constitution. (5) A majority of the members elected to each House is necessary to pass a bill or joint resolution. (6) The 15th clause of the schedule provided that a new county might be formed out of the counties of Perry and Spencer, "if a majority of all the votes given at said election" were in favor of the new organization. An examination of the constitutional debates shows that the sense of the Convention was that amendments could be adopted only by a majority of the electors of the State. As originally reported and as finally adopted, amendments must receive the affirmative sanction of "a majority of the qualified voters;" and a proposal to amend by providing that "a majority of all the votes cast for or against the same," was rejected. The court likewise held that since other matters were submitted at the April election, "the Governor, by the act, had no power to declare whether the amendment had been adopted or rejected. . . ."

#### MAJORITY OPINION.

((69 Ind. 505, 515))

We can find no authority, either in the constitution of 1816, or in the constitution of 1851, or in the legislative acts upon the subject, by which a constitution, or any of its separate articles, or any amendment thereto, could be adopted or ratified by a plurality of votes of the electors, or by any less number than a majority of the whole number cast at that election. . .

The people of a State may form an original constitution, or abrogate an old one and form a new one, at any time, without any political restriction except the constitution of the United States; but if they undertake to add an amendment, by the authority of legislation, to a constitution already in existence, they can do it only by the method pointed out by the constitution to which the amendment is to be added. The power to amend a constitution by legislative action does not confer the power to break it, any more than it confers the power to legislate on any other subject, contrary to its prohibitions.

. . . to hold that a plurality, or a majority of a part instead of all the electors, could ratify an amendment to the constitution—a far more important act than the proposal of the amendment, or

the passage of a bill which is repealable—would be a departure from the line of safe reasoning and logical sequence, and contrary to the constitution and the laws.

The principle of plurality . . . frequently develops sufficiently glaring disproportions between the number of electors of a constituency and the number of votes cast sufficient to elect; but, when applied to the ratification of a constitutional amendment, and pushed to an extreme, it runs into absurdity. The election of an officer affects the rights of no one except the person elected. To him it grants a privilege, to be exercised for the public good, the exercise of which is a public necessity. It does not affect the right of even the person defeated, but only denies him a privilege which can not be granted except by an election. In such case the constitution requires only the highest number of votes to elect, though it may be only a plurality of a very inconsiderable number of the electors, in proportion to the whole number. But the ratification of a constitutional amendment affects the rights of millions of people who are not electors and who can not vote, and for an indefinite time, until the amendment shall be abrogated by the same power that made it. In such case the constitution requires a majority of all the electors to ratify the amendment. The principle of plurality, which might ratify a constitutional amendment, irrevocable by legislative action, binding the rights of two millions of people, for an indefinite period, by a vote of two electors against the vote of one, when the whole number of votes cast were but three, is not only unconstitutional, but it is dangerous to human rights, and repugnant to the sense of mankind. As the adoption of a constitution is the considerate act of an entire people, and as it binds all departments of the government, and can not be repealed except by the same power that made it, its adoption should not be left to the vicissitudes of a meagre plurality of votes, which the accidents of a day might cast one way or the other . . .

If an amendment to the constitution could be proposed by the General Assembly, and adopted by a mere plurality of votes, however small the whole number cast might be, such as is sufficient to elect members of the General Assembly, the constitution would have no more permanence or force than a legislative act, and would thus be rendered useless as a fundamental, irrevocable, supreme law, to resist unconstitutional action, either by the legislative, judicial or executive departments of the State government. Indeed, such a principle would leave the General Assembly politically omnipotent, in spite of the constitution.

. . . The question for us to decide is, has the amendment been ratified or not? The people of the State of Indiana do not desire advantages obtained at the expense of the constitution; and no conceivable advantages could compensate them for a breach of the fundamental law of the State. They would pay dearly, indeed, for the advantage of an immediate decision of this court that the amendment was ratified, if it had to be made in violation of the constitution and the law.

This court holds that it requires at least a majority of all the votes cast at the same election to ratify a constitutional amendment. We also hold that, as the act of March 10, 1879, is defective in not providing for the count of the aggregate number of votes cast throughout the State on the day of the election, or in not providing some means to ascertain the whole number of votes cast, by which it might be learned what proportion the number cast in favor of the ratification bore to the whole number, there is no source from which this court can ascertain whether the amendment received a majority of all the votes cast at the election or not. As the amendment was submitted upon the day of the general spring elections throughout the State, and as there were, by law, officers to elect at the same time in the various counties, it must be presumed that other votes than those for or against the amendment were cast at the same time. From the peculiar ballots used in voting upon the amendment, many electors may have voted "no" and "yes", which votes upon the question of the amendment would not be counted; such, also, should be counted in estimating the whole number of the electors voting; but the law does not provide for certifying them up. It is also held that the constitution must remain as it was before the amendment was submitted, until it shall affirmatively appear that the amendment is ratified. As it does not thus affirmatively appear, we must hold that the amendment is not ratified by a constitutional majority. The opinion, therefore, of this court is, that it requires a majority of the electors of the State to ratify an amendment to the constitution, but that the whole number of votes cast at the election at which the amendment is submitted may be taken as the number of electors of the State.

The writer of this opinion, speaking for himself only, holds that it requires the votes of a majority of the electors of the State to ratify a constitutional amendment. He thinks that this is not only the plain meaning of the words used in Section 1 of Article 10 of the constitution, but that it was also the manifest intention of



the framers of the constitution, as ascertained by the proceedings of the convention. He also holds that the number of electors of a State is a public fact which the courts must ascertain, without averment or proof, whenever it is necessary to the decision of a cause. For this purpose a court may look to the archives of the State, to the official returns of general State elections, to legislative action, and to the proclamations of the executive. He does not mean that a court must know the exact number of electors of the State, to a unit; this is impossible, for the number, on account of deaths and coming of age, is not the same during any twenty-four hours; and what is impossible to do is not required to be done. The practical meaning of the phrase "all the electors of the State" is that substantial number who vote at general State elections, and the number of whose votes is officially returned by sworn officers, into the office of the Secretary of State. This number need not necessarily include electors who are sick, absent from the State, or prevented from going to the polls. The construction must be such as has a sensible application to the affairs of men, rather than one of abstract numbers or theory. The history of a State, the number of inhabitants, and its official statistics are public facts known to all persons, and never need to be averred or proved in judicial proceedings. He also holds, that, if the whole number of votes cast at a given election should be less than the whole number of the electors of the State thus interpreted, the latter number, being the constitutional guide, would govern the former, having only the authority of legislative action; for the number cast might bear a very inconsiderable proportion to the whole number of electors in the State.

In the opinion of this court, the consequences spoken of in the argument, of this decision, can at most be but a temporary inconvenience. We perceive no irregularity in the proposal of the amendment for ratification. It has simply not been ratified and not been rejected. The vote upon it was ineffectual for want of the constitutional majority. We see no reason why the General Assembly may not re-submit the amendment to the electors of the State, under an amended act, such as experience may prove to be sufficient to present the question to the courts, if it ever should arise again.

#### DISSENTING OPINION OF JUDGE NIBLACK.

In a dissenting opinion, Judge Niblack contended: (1) That if a proposed amendment is submitted to the electors of the State and agreed to by a majority of the electors voting at the election, it is ratified and becomes a part



of the Constitution. (2) The amendment was submitted at what was, as to it, a special election; for even though the amendment was submitted on the day when the township elections were held and the machinery of those elections was used in obtaining a vote upon the proposition, a separate ballot was required and separate and distinct returns were made to the Secretary of State. The township elections were local, and the returns therefrom were made to the county clerks only and were not made a part of the archives of the State; hence the court was unable to take judicial notice of the aggregate number of votes cast at the township elections. (3) He concurred in the reasoning of his brethern of the court that the Wabash and Erie Canal amendment was fully incorporated as a part of the Constitution; not because it had been "acquiesced in for more than seven years" and "can not now be disturbed," but "because a majority of votes, at a fair election, were cast in favor of it."

((69 Ind. 505, 528))

I agree, without reservation, that an amendment to the constitution must be submitted to the electors of the State, and that a majority of such electors must ratify such an amendment, before it can become a part of the constitution. But how that majority is to be ascertained, is the important question now presented for our decision.

. . . I am of the opinion that Sections 1 and 2 of Article 16 of the constitution may, for the purposes of this case, be epitomized and paraphrased so as to read substantially as follows:

When a proposed amendment to the constitution shall have been agreed to by two consecutive General Assemblies, it shall be submitted to the electors of the State, and if a majority of such electors, *voting at the election*, shall ratify the same, such proposed amendment shall become a part of the constitution, and if two or more amendments shall be submitted at the same time, they shall be submitted in such a manner that the electors shall vote for or against each of such amendments separately . . .

If the amendment under discussion had been submitted to the electors of the State at, and as a part of, a general election, and if the returns of that general election had shown affirmatively that a majority of those voting at such election had not voted to ratify such amendment, then quite a different question would have been presented for our consideration. There is a good authority for holding that in such an event the amendment would not have been ratified.

But no such element enters into this case. The amendment in question was submitted at what was, as to it, a special election. True, it was submitted on the first Monday of April, the day of our township elections, and the machinery, so to speak, of those elec-

tions, was used in obtaining a vote upon it. But a separate ballot was required and used in voting both for and against it, and separate and distinct returns were required and made as to the vote upon it to the Secretary of State.

Township elections are local and not general in their character, and returns from them are only made to the clerks of the respective counties, and are not made a part of the archives of the State, as the returns of the general elections are. We are, therefore, unable to take judicial notice of the aggregate number of votes cast at those township elections on the day the amendments were voted upon. That is a subject about which we judicially know nothing, and concerning which we can presume nothing, adverse to the amendment under consideration. In my judgment, all the presumptions are to be taken in favor of the legality of every election held under the forms of law, and none against any such election. Everything alleged against an election so held must be affirmatively shown. . .

Granting that we are required, in proper cases, to take judicial notice of each census of the State, and of the number of persons voting at each of our general elections, we are still unable to estimate from these, with even proximate certainty, the number of persons in the State entitled to vote on the first Monday of last April. It is an admitted fact, that the number of the voters of the State changes day by day, and is never the same for any perceptible length of time. It is, also, a matter of common observation that an entirely full vote is never polled, the number not voting at every election being always a variable and uncertain quantity. . .

The result of an election is a matter of exact calculation and not of proximate estimates. One vote superadded in a proper case will turn the scale and constitute a majority. Hence, if we set up our judicial knowledge as to the number of electors in the State in opposition to the count taken from the ballot-box, that judicial knowledge ought to be mathematically accurate as to the number of such electors. Any judicial information less accurate than that, used to overthrow an election, might lead to chaotic confusion and to the most dangerous usurpations. We can never properly be required to act upon judicial information which from its very nature, is *indefinite* and *uncertain*.

The proposition that a court may, upon its own information, go outside of the certified result of an election at which all had a chance to vote, and at which all voted who felt interest enough to vote, and enter upon a merely conjectural inquiry as to how many

persons there may have been who might have voted, but “did not,” with a view to testing the validity of such an election, impresses me as a most novel and extraordinary proposition indeed.

DISSENTING OPINION OF JUDGE SCOTT.

Judge Scott likewise filed a dissenting opinion in which he held that; (1) If a proposed amendment is ratified by a majority of the electors voting for and against it, it becomes a part of the Constitution. (2) The issuance of the Governor's proclamation declaring the vote given for and against the amendment was conclusive, and the amendment thereupon became a part of the Constitution. (3) Persons entitled to vote but who failed to vote are presumed to assent to the expressed will of the majority.

((69 Ind. 505, 539))

I am of opinion, that the proper interpretation of Sections 1 and 2 of Article 16 of the constitution is, that when an amendment of the constitution is properly passed by the General Assembly and submitted to the electors of the State, if it be ratified by a majority of the electors voting for and against such amendment, it becomes a part of the constitution. Whether such proposed amendment received the requisite number of votes to make it a part of the constitution, must be determined in the manner prescribed by the legislative department of the State government—and when the Governor, in compliance with said act, issued his proclamation declaring that the amendment had received, for its ratification, 169,479 votes, and against its ratification, 152,363 votes, that was an end of the question, and this court can not, in my opinion, go behind this political act of a co-ordinate branch of the State government, and hunt for information upon which to base a judgment—When the Governor had issued his proclamation, giving the number of votes for and against the amendment, that was all he was required to do, and the constitution itself fixed the conclusion, that such amendment had become a part of that instrument.

The opinion of the majority of the court proceeds on the theory that, if the amendment had been submitted on a day when there was no general election, the number of votes cast for and against such amendment would constitute the number of electors of the State; and if it had received a majority of the votes thus cast, it would have been ratified in accordance with Section 1 of Article 16 of the constitution. I am unable to see any force in this distinction, when applied to the case under consideration. Under the act of March 10, 1879, the submission of the amendments

proposed by the General Assembly, was as distinct a proposition as if they had been submitted on some other day. The ballots were distinct; the vote on each amendment was separate and distinct; there was a separate and distinct certification of the vote for and against each amendment, by the officers of the election, to the clerks of the several counties; by the clerks to the Secretary of State; by the Secretary of State to the Governor; and the Governor was to declare the result, by proclaiming the number of votes for and against each of the amendments, which was done in accordance with the act.

. . . I think the true rule is, that all qualified voters or electors, who absent themselves from an election duly called, or who fail to vote on a proposition legally and fairly submitted to them, are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. Any other rule would be productive of greatest inconvenience, and ought not to be adopted unless the legislative will to that effect be clearly expressed.

**326. Republican Platform of 1880—Adoption of Constitutional Amendments (June 17, 1880).**

The Republicans, assembled in convention in Indianapolis on June 17, 1880, some three months after the proposed constitutional amendments had been submitted to the people and ostensibly adopted. The following resolution was adopted before the amendments, in the case of *State v. Swift*, were declared not concurred in.

*[Indianapolis Journal, June 18, 1880.]*

*Resolved*, That we congratulate the people of Indiana upon the adoption of the constitutional amendments recently submitted, under which, by wise legislation, the purity of the ballot-box may be secured, increased economy in the government attained, the speedy administration of justice provided for, and extravagant municipal taxation prevented. And we point to the open hostility of the leaders of the Democratic party to these salutary provisions as evidence of the insincerity of their professions, their unfaithfulness to the public welfare, and their unfitness to administer the State government—recognizing at the same time, the patriotism and independence of the large mass of the democratic party who gave those amendments their support.



## THE FIFTY-SECOND GENERAL ASSEMBLY, AND THE SPECIAL SESSION OF 1881 (MARCH 8 TO APRIL 16).

The political complexion of the General Assembly of 1881 was as follows: Senate, 24 Republicans, 24 Democrats and 2 Greenbacks; House, 58 Republicans, 41 Democrats and 1 Greenback. The regular session expired before all of the more important business was transacted and a special session was called and sat from March 8 to April 16. The most important proposition of a constitutional nature which was considered by the General Assembly of 1881 was the resubmission of the constitutional amendments which according to the decision of the Supreme Court had not been adopted at the April election of 1880. Various other constitutional measures were considered at this session. Two unsuccessful attempts were made to provide for the calling of a constitutional convention, and resolutions were introduced embodying proposed amendments prohibiting the manufacture and sale of intoxicating liquor, prescribing the qualifications of lawyers, increasing the membership of the Supreme Court, fixing the terms of State and county officers, extending the right of suffrage to women and extending the duration of a regular session of the General Assembly to 100 days.

**327. Governor Gray's Recommendation Relative to the Pending Amendments (January 8, 1881).**

In his message to the General Assembly on January 8, 1881, Governor Gray recommended that in conformity with the decision of the Supreme Court in *State v. Swift* the pending amendments should be submitted to the electors at a special election.

*[House Journal, Fifty-second Session, 36.]*

Under the provision of the act of March 10, 1879, providing for the submission of proposed amendments to the Constitution to the electors at the spring election, held on the first Monday of April, 1880, the number of votes for and against each amendment was announced by proclamation of the Governor, and published April, 1880. In a case arising at a city election in May, appealed to the Supreme Court and determined in June, the question of the ratification or rejection of amendment No. 1 was involved, and, as a matter of law and judicial knowledge of historical facts, it was held that a majority of the electors of the State had not ratified the same, and, therefore, that such amendment had not become a part of the Constitution. Although the number of electors voting for other amendments proposed was larger than the number of those voting for the first, the principle settled has been accepted and acted upon with reference to all. If the enumeration of male inhabitants over the age of twenty-one years, required by the Constitution and made the basis of an apportionment of sena-



tors and representatives, and Representatives in Congress among the several counties, be accepted as a census of the electors of the State during the ensuing six years, and an affirmative vote of more than one half that number be necessary to ratify a submitted amendment, the problem is easily solved and comprehended by any one familiar with the passage of bills through your two houses. If it be enough that a majority of those voting shall favor a proposed amendment, it should be submitted to the electors at a special election in order that no questions could arise as to whether the amendment had received a majority of the votes cast. It remains for you to provide for again taking the sense of the electors of the State, or in your large discretion to declare that the amendments proposed have ceased to be living issues before the people, and are no longer "awaiting the action of a succeeding General Assembly or of the electors."

**328. Governor Porter's Recommendation Relative to the Pending Amendments (January 10, 1881).**

Albert G. Porter, the in-coming Governor, in his inaugural address, delivered to the General Assembly on January 10, indorsed the recommendation of the retiring Governor Gray, relative to the resubmission of the amendments at a special election.

*[House Journal, Fifty-second Session, 81.]*

The amendments to the Constitution, which, at the last spring election were submitted to the electors for adoption or rejection, have been held by the Supreme Court, in opposition to what, it is believed, had previously to the decision, been the general sense of the legal profession, not to have been constitutionally adopted.

The court, while deciding thus, took occasion to express an opinion that another submission might take place, notwithstanding the submission and vote which have occurred, if the legislature shall choose to provide therefor by an appropriate enactment. The court, though not now composed entirely of the same members as when the decision was made, will, it is believed, feel constrained to accommodate itself to this suggestion, whatever view the new judges might entertain, if the question were one of first impression. I, therefore, earnestly recommend that a bill be speedily passed, giving the electors of the State another opportunity to pass their judgment upon these amendments.

The amendments have been the theme of frequent and careful discussion. So general is the sentiment of unbiased men in

their favor, that I believe if a vote upon them could be separated from party politics, it would be nearly unanimously for their adoption.

The expediency can hardly be questioned of limiting within reasonable bounds the debts which may be contracted by cities and townships, so that taxes may not become an intolerable burden, and of fixing a limit upon the fees to be paid to the officers in the populous counties, so that while they shall be adequately compensated, estates and suitors may not be burdened with needless costs and our politics corrupted by the expenditures made in the greedy scramble to obtain office. These reforms are provided for by two of the amendments.

Another amendment is of such extreme importance that it may be regarded as almost vital to the elective franchise. When the elector places his ballot in the box, it is a hollow and preposterous ceremony if some other person, not entitled to the franchise, may neutralize his vote by a fraudulent ballot, or if some dishonest officer may substitute a false ballot for the one he has deposited, or stuff the box with fictitious ballots. Our laws do not provide—the Constitution will not allow that they shall provide—that the person who offers his ballot shall prove, even when challenged, that he has resided a single hour or minute in the county or precinct where his vote is offered. It is enough that he shall show that at the particular instant he is such a resident, and has resided in the State for six months. No registration law can be passed; the Constitution will not allow one.

The consequence of all this is, that where even the most expensive and organized vigilance is maintained, persons from other counties and other states, not entitled to vote at the precinct where they tender their ballots, often succeed in depositing fraudulent votes; and, where this vigilance is not maintained, the feeble floodgates against fraud fly open at the first assault, and the ballot-box is deluged with fraudulent ballots.

I find upon examination, that nearly all the northern States, except Indiana, require as a qualification to vote, a previous residence of the voter in the precinct where his vote is offered, and that hardly a less number require a registration of voters. These laws are an expression of the people of those states, founded upon experience, that such provisions are necessary to preserve the purity of the elective franchise.

At every general election for many years, sums of money, vastly greater than has ever been suspected by the people, have been

expended to prevent invasions of the ballot-box by persons not authorized to vote, which need not have been expended but for the clause in our Constitution, that will not allow safeguards against fraud to be established, which our own experience has shown to be necessary, and the legislation of other States has provided with respect to those states.

Bad laws seldom inflict merely a single evil. Where the facilities for fraud are so considerable, the members of each party think that their opponents will perpetrate them, and the next step is too apt to be to lay schemes by which wrong may be met by kindred wrong. The consequence of all this is, that politics become embittered; that neighbors who, in their business transactions, would place implicit confidence in each other, believe that, to obtain a party advantage, they would quarter false voters, encourage repeating and connive at a false count of the ballots, and that the young, learning and believing that fraud is perpetrated without disgrace by the most respectable persons, in what they are taught to be the most important of transactions, are not able to draw the refined distinction which would make it wrong or disgraceful to perpetrate frauds in less important ones. Thus, the foundations of private virtue are sapped by tolerance given to public fraud.

### **329. Resubmission of the Pending Constitutional Amendments (February 21, 1881).**

On January 11, Mr. James B. Kenner, a Republican, introduced a bill in the House which was designed to provide for the resubmission of the constitutional amendments which, according to the Supreme Court decision, were still pending action by the people. On January 15, the bill was referred to the Judiciary Committee which on January 20, reported it back to the House with several amendments, which were concurred in. By a vote of 64-21, the bill was advanced to engrossment and passed by a vote of 74-23, and was referred to the Senate. On January 25, the bill was referred to the Judiciary Committee. On February 2, the committee submitted its report, recommending an entirely new bill which was concurred in by the Senate and the bill passed on February 11 by a vote of 28-21. This was the form in which the bill was finally approved, except that the date of the election was fixed on March 14 instead of April 4 as was provided in the Senate bill. See Appendix IX.

*[Laws, Fifty-second Session, 29.]*

AN ACT providing for the submission to the electors of the State of Indiana for ratification or rejection the constitutional amendments proposed to and adopted by the General Assemblies of said State at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others, providing penalties for violations thereof, and repealing all laws in conflict therewith, and declaring an emergency.

WHEREAS, Each of said amendments was agreed to by a

majority of all the members elected to each of the two Houses of the said General Assembly, in which they were proposed as aforesaid, and entered with the yeas and nays thereon on their journals, and referred to the General Assembly to be chosen at the then next following general election; and,

WHEREAS, In the General Assembly next afterward chosen, to-wit, in the General Assembly chosen at the general election held in October, 1878, and which held its sessions in the year 1879, each of said proposed amendments was agreed to by a majority of all the members elected to each House; and,

WHEREAS, Said General Assembly last named, by an act entitled "An act providing for the submission to the electors of the State of Indiana for ratification the constitutional amendments proposed to and adopted by the General Assemblies of said State at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others, providing penalties for violations thereof, and other provisions relating to the subject matter," which was approved March 10, 1879, provided, as was supposed for the submission of each and every one of said amendments so proposed to the electors of the State; and,

WHEREAS, It was afterwards decided by the Supreme Court that said act was insufficient in its provisions to make a valid submission of said proposed amendments to the electors of the State, and that said attempted submission was void, therefore,

WHEREAS, In the General Assembly of the State of Indiana elected at the general election held in October, 1876, and which held its sessions in the year 1877, there was proposed by the Senate of said General Assembly seven separate amendments of the Constitution of this State, which amendments were in the words and figures following, and designated in the resolutions by which they were proposed by the numbers following, respectively, to-wit:

#### Amendment No. 1.

Amend Section 2 of Article 2 so as to read as follows: Section 2. In all elections, not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in



the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

#### Amendment No. 2.

By striking out the words, "No negro or mulatto shall have the right of suffrage," contained in Section 5 of the second article of the Constitution; and,

#### Amendment No. 3.

Amend Section 14 of the second article to read: Section 14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for, and shall also provide for the registration of all persons entitled to vote.

#### Amendment No. 4.

Strike the word "white" from Sections 4 and 5 of Article 4.

#### Amendment No. 5.

Amend the fourteenth clause of Section 22 of Article 4 to read as follows: In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required.

#### Amendment No. 6.

Amend Section 1 of the 7th article to read: Section 1. The judicial powers of the State shall be vested in a Supreme Court, circuit courts, and such other courts as the General Assembly may establish.

#### Amendment No. 9.

Strike out all the sections of the 13th article, and in lieu thereof insert the following: Section 1. No political or municipal corporation in this State shall ever become indebted, in any manner or



for any purpose to an amount, in the aggregate, exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by such corporations shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense to such amount as may be requested in such petition; and, therefore,

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That each of said proposed amendments of the Constitution shall be submitted to the electors of the State, at a special election to be held for that purpose on Monday, the 14th day of March, 1881, for their ratification or rejection.

Sec. 2. The Secretary of State shall cause to be prepared ballots, on each of which shall be printed the proposed amendments, numbered severally as in the preamble of this act, and below each proposed amendment shall be printed the word "Yes" in one line and in another line the word "No." He shall immediately send to the sheriff of each county a number of said ballots, not less than three times the number of votes cast in said county at the last general election, and the sheriff shall, immediately after receiving said ballots, deliver to the trustee of each township in his county a number of said ballots, not less than double the number of votes cast at said election in said township. It shall be the duty of each trustee to see that a number of said ballots, not less than double the number of votes cast at said election in each precinct in his township, be in the hands of the inspector thereof, at the opening of the polls. The inspector shall, on request, deliver to each elector at the time of the election one of said ballots. The Secretary of State shall also procure and furnish immediately, as other election papers are furnished, the blanks for the poll lists, tally sheets and certificates required by this act.

Sec. 3. Any qualified elector may vote at such election, for or against any or all of said proposed amendments, by depositing one of said ballots in the ballot-box. If he intends to vote for any amendment he shall leave under the same, the word "Yes" and erase the word "No" by drawing a line across it, or otherwise. If he intends to vote against any amendment, he shall leave

under the same the word "No" and erase the word "Yes," and the votes cast shall be counted accordingly. If, under any of said proposed amendments, as printed on said ballots, the words "Yes" and "No" shall both remain without erasure or both be erased, then such ballot shall not be counted as a vote either for or against that amendment under which said words so remain; but no elector shall vote more than once at such election.

Sec. 4. The laws of this State governing general elections as to the organization, powers and duties of election boards, and the return and canvassing of votes, shall be observed by the several boards of election in making return and canvass of the votes cast at the election herein provided for, so far as they may be applicable, modified however, as to the contents and return of certificates to correspond with the requirements of this act.

Sec. 5. The board of election of each precinct shall count the votes for and against each proposed amendment separately, and also the whole number of electors who voted at the election, and certify all said numbers, specifying separately the number of votes cast for each proposed amendment and the number cast against each, and the whole number of electors who voted at the election, over their signatures, or the signatures of a majority of them to the clerk of the circuit court in their county within two days after the election. The clerk of each county shall, within four days after said election, ascertain from such certificates the total vote in his county for and against each proposed amendment separately, and also the whole number of electors who voted at the election, and certify the same to the Secretary of State. The Secretary of State shall, as soon as possible after the election, determine from said certificates of the clerks of the several counties, the total vote cast in the State for and against each proposed amendment separately, and also the total number of electors who voted at the election, and certify the same to the Governor; and the Governor shall immediately issue and publish his proclamation, declaring therein the number of votes cast in the State, for and against each proposed amendment separately, and also the whole number of electors who voted at the election. And if it shall appear that the number of votes cast in the State for any one or more of said proposed amendments was greater than the number of votes cast against the same amendment, and equal to a majority of all the electors who voted at the election, then each such amendment shall be deemed and taken to have been ratified by the electors of the State, and become part of the Constitution, and shall

be so declared by the Governor in his proclamation. But if it shall appear that any proposed amendment has received in its favor a number of votes less than a majority of all electors who voted at the election, then each such amendment shall be deemed and taken to have been rejected by the electors of the State, and shall be so declared by the Governor in his proclamation. For the purpose of the ratification or rejection of said proposed amendments, and each of them, the number of electors who shall vote at the election herein provided for, shall be conclusively taken and deemed to be the whole number of electors in the State. The certificate of the Secretary of State herein provided for, and the proclamation of the Governor based thereon, shall be final and conclusive evidence of the number of votes cast for and against each amendment, and of the whole number of electors who voted at the election, and of the ratification or rejection of each proposed amendment, as the case may be. In all proceedings had under this act the proposed amendments may be designated by number, as in the preamble of this act, except in the ballots.

Sec. 6. Nothing in this act contained shall be construed to require the use of the ballots provided for in this act, to the exclusion of other written or printed ballots; and all ballots cast shall be counted and returned in accordance with the intention manifest on the face thereof.

Sec. 7. Any officer whose duty it is, under this act, to make or sign any return or certificate of the number of votes cast for or against said proposed amendments, or of the number of electors who voted at the election, who shall knowingly make or sign any false return or certificate of any such number, and any officer violating any of the provisions of this act, or failing to discharge any duty by this act imposed on him, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding six months.

Sec. 8. If any elector shall cast, or personally offer, or attempt to cast more than one ballot at such election, he shall be deemed guilty of a misdemeanor, and on conviction thereof, he shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not exceeding six months. If any person shall vote or offer to vote on any of said amendments without being a qualified elector in the precinct in which he so votes or offers to vote, he shall be liable to all the pains and penalties provided by law for the like offense at a general election.

Sec. 9. It shall be the duty of the Governor, immediately upon the passage of this act, to issue a proclamation notifying the electors of the State of the election herein provided for. It shall be the duty of the Secretary of State to cause said proclamation and this act to be printed together in such number as shall be necessary for the purposes following, and to transmit to the sheriff of each county, with the ballots and blanks hereinbefore provided for, a sufficient number of such printed copies to enable such sheriff to deliver four of the same to each clerk, four to each auditor, one to each township trustee for himself, and one for each inspector of election in his township, other than himself, which it shall be the duty of such sheriff to do. It shall be the duty of the Secretary of State to send the printed copies of this act, and the Governor's proclamation, and the ballots, poll list, tally sheets and certificates, which he is by this act required to send to the sheriffs of the several counties, by express, to all counties with the county seat of which there is communication in that manner from Indianapolis, and to the sheriffs of other counties by special messengers. And it shall be the duty of the clerks of the several counties to make out in duplicate the certificates herein required from them, and to send one of said duplicates to the Secretary by mail, and the other by express from every county, from the county seat of which there is communication in that manner with Indianapolis, and from other counties by special messenger.

Sec. 10. The Secretary of State shall be allowed the actual expenses of printing the Governor's proclamation, and this act, procuring the ballots, poll lists, tally sheets and certificates, and the expense of distributing the same, and the expense of the transmission of the returns from the clerk to him, to be audited by the Auditor of State, and paid out of the State Treasury. The sheriff of each county shall be allowed for his services ten dollars, to be paid out of the county treasury. The special messenger of the secretary and the clerks, if any shall be found necessary, shall be allowed two dollars per day for the time necessarily occupied by them, and their actual necessary expenses of travel, to be evidenced by an itemized and verified account, filed with the Secretary and embraced in the expenses to be audited and paid out of the State Treasury as above provided. The other officers shall be paid the same compensation, and in the same manner for the time employed, as in general elections.

Sec. 11. It shall be the duty of every officer charged with any service under this act to perform the same with the utmost prompt-



ness and fidelity, but the failure of any such officer or officers to perform any such duty in the time or manner herein directed, or the failure of the electors in any precinct or county to hold an election as herein provided, shall not in any manner affect the validity of such election.

Sec. 12. Inasmuch as it [is] important that the submission of said proposed amendments shall take place before the adjournment of the present session of the General Assembly, it is declared that an emergency exists, requiring that this act shall take effect immediately, and that the same shall be in force from and after its passage.

Approved, February 21, 1881.

### **330. Resubmission of Pending Amendments (January 13, 1881).**

Meantime other bills on the same question were being considered. On January 13, Mr. Vinson Carter, a Republican, introduced a bill in the House to provide for the resubmission of the pending amendments. On January 18, the bill was referred to the Judiciary Committee for completion. On January 24, the committee reported the bill back to the House with the recommendation that it lie on the table and that the preceding bill be given precedence.

*[House Journal, Fifty-second Session, 138.]*

House bill No. 40. A bill for an act providing for the submission to the electors of the State of Indiana, for ratification of the amendments of the Constitution, proposed and agreed to by the General Assemblies of said State at the sessions of 1877 and 1879; prescribing duties of officers of election, and others, in relation thereto; providing penalties for violations of it and other matters relating to the same subject, and declaring an emergency.

### **331. Resubmission of Pending Amendments (January 13, 1881).**

A similar measure was introduced in the Senate on January 13 by Mr. F. W. Viehe, a Democrat. On January 14, the bill was referred to the Judiciary Committee who reported the bill back to the Senate together with the House bill on the same subject and the bill was subsequently laid on the table.

*[Senate Journal, Fifty-second Session, 90.]*

Senate bill No. 60. An act providing for the submission to the electors of the State of Indiana for ratification, of the amendments to the constitution, proposed and agreed to by the General Assemblies of the State at the sessions of 1877 and 1879, prescribing duties of officers of election and others in relation thereto, providing penalties for violation of it, and other matters relating to the same subject, and declaring an emergency.

### **332. Legality of Submission of New Amendments (January 19, 1881).**

Section 2 of Article 16 of the Constitution provides that "while . . . an amendment . . . which shall have been agreed upon by one General Assembly



shall be awaiting the action of the succeeding General Assembly, or of the electors, no additional amendment . . . shall be proposed." According to the decision of the Supreme Court in *State v. Swift*, the proposed amendments submitted to the people in 1880 were still awaiting the action of the electors. Obviously no amendments could be legally proposed at the 52d session of 1881. In spite of that fact, eleven amendments were actually proposed in the two Houses and four were actually adopted. The members of the legislature were aware of the probable unconstitutionality of this procedure as is shown by the following resolution.

[*Senate Journal, Fifty-second Session, 144.*]

WHEREAS, The Supreme Court has recently said, in a case before it, that the proposed amendments to the Constitution voted on at the last April election have been neither ratified nor rejected, and numerous voters have petitioned for such immediate action as will secure the early submission to a vote of the people for the ratification or rejection of another amendment, and,

WHEREAS, Section 2 of Article 16 of the Constitution provides that while an amendment or amendments which shall have been agreed upon by one General Assembly shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed; therefore, be it

*Resolved*, That the Committee on the Judiciary be instructed to report to the Senate whether this General Assembly can lawfully comply with the request of the petitioners before the electors have again voted on the amendment.

### 333. **Term and Eligibility of Secretary, Auditor and Treasurer of State (January 17, 1881).**

In his message to the legislature, Governor Gray recommended the adoption of an amendment to the Constitution "making the tenure of all the State offices four years, the incumbent to be eligible only four years in every period of eight years, the election to occur between the presidential elections, so as to eliminate State from National politics. I can see no good reason why the Governor, Lieutenant Governor, Clerk and Reporter of the Supreme Court should be elected for four years, and the Secretary, Auditor and Treasurer of State for two years. A like provision for equalizing the terms of county officers would doubtless be favorably received." On January 17, Mr. William A. Traylor, a Democrat, introduced a joint resolution in the Senate proposing an amendment to the Constitution to lengthen the term of the Auditor, Secretary and Treasurer of State from two years to four years and declaring all persons ineligible to any such offices for more than four years out of any eight years. The resolution was referred to the Judiciary Committee. On March 1, the committee recommended that the resolution lie on the table. The resolution was subsequently recommitted to the Judiciary Committee and on April 1, during the special session, the committee made a favorable

report which was concurred in on April 7 and the bill advanced to engrossment. On April 8, the resolution passed the Senate by a vote of 38-5, and was reported to the House. On April 15, the resolution was taken up and passed by a vote of 56-12.

[*Laws, Fifty-second Session, 719.*]

A Joint Resolution proposing an amendment to Section 1, Article 6, of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby, proposed, to-wit: Amend section one of the sixth article to read:

Section 1. There shall be elected, by the voters of the State, a Secretary, and Auditor and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than one term, or four years, in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

### 334. Term and Eligibility of County Officers (January 17, 1881).

On January 17, Mr. William A. Traylor introduced a second resolution in the Senate which was designed to amend the Constitution by fixing the term of all county officers at four years and by rendering any person ineligible to serve more than four years out of any eight years. The resolution was referred to the Judiciary Committee. On March 1, the committee recommended that the resolution lie on the table. On March 28, the resolution was recommitted to the Judiciary Committee who on April 1, made a favorable report. On April 7, the report was concurred in and the resolution was advanced to third reading. On April 8, the resolution passed the Senate by a vote of 40-4 and was referred to the House. On April 15, the resolution passed the House by a vote of 57-10.

[*Laws, Fifty-second Session, 720.*]

Senate Joint Resolution No. 7 proposing an amendment to Section 2 of Article 6 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the cir-

cuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, and no person shall be eligible to either of said offices more than four years or one term, in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3.

### 335. Terms of State and County Officers (March 17, 1881).

Some time later, on March 17, Mr. Stanley W. Edwins, a Democrat, introduced a resolution in the House proposing an amendment to the Constitution whereby the term of both State and county officers should be fixed at 4 years. The Judiciary Committee to which the resolution had been referred submitted a favorable report on April 1, and the bill was passed on April 8, by a vote of 58-16, and was referred to the Senate, but no action was taken.

*[House Journal, Fifty-second Session, 1048.]*

House Joint Resolution No. 9 in relation to the length of time the State and county officers shall be elected and hold their offices, and for amending certain sections and articles of the Constitution of the State of Indiana, in relation thereto.

### 336. Prohibiting the Manufacture and Sale of Intoxicating Liquors (March 15, 1881).

On March 15, Mr. James N. Huston, a Republican, introduced a resolution in the House proposing an amendment to the Constitution to prohibit the manufacture and sale of intoxicating liquors except for scientific, medical or sacramental purposes; which was referred to the Committee on Temperance. This proposed amendment was undoubtedly introduced in response to the large number of temperance petitions which had been filed during the 52d session. It is impossible to determine the character of all of these memorials but many of them demanded an amendment to the Constitution prohibiting the liquor traffic. Such petitions were presented from the citizens of at least sixty counties of the State. On March 29, the committee brought in a divided report. The majority report recommended passage; the minority report recommended that the proposed amendment lie on the table, for the reason that "So radical a change in the present system of the liquor distilling and malt brewing business as is proposed by the joint resolution we deem to be unwise, and far from being demanded either by public sentiment or the exigencies of the times. It is our candid opinion that the evils now complained of would be greatly increased and manifold, and in our opinion it would not mitigate the evils arising from the sale and use of intoxicating liquors." By a vote of 51-32, the minority report was laid on the table. The majority report was then concurred in by a vote of 53-31. A motion to recommit the resolution with instructions to amend by inserting the words "hard cider" after the words "any other intoxicating liquors" was rejected by a vote of 32-51. An attempt to strike out that portion of the proposed amend-

ment excepting liquors used for medical, scientific, mechanical and sacramental purposes was lost by a vote of 40-47. A motion to amend the resolution by eliminating the provision permitting the use of liquors for sacramental purposes was lost by a vote of 40-48. The resolution was then advanced to engrossment by a vote of 56-34 and was passed by a vote of 56-36. On March 31, the resolution was referred to the Senate. On April 1, the Senate refused to take the resolution up for consideration. On April 5, the resolution was referred to the Judiciary Committee by a viva voce vote. Later the same day the following protest against the ruling of the chair was filed.

[*Senate Journal, Fifty-second Session, 877.*]

We, the undersigned, hereby enter this, our protest, on the Journal of the Senate against the ruling and decision of the chair when a viva voce vote had been taken on the question of referring House Resolution No. 7 to the Committee on Judiciary with instructions, and before said vote was announced Senators Bundy, Spann, and Foster demanded the ayes and nays, but the chair, disregarding said demand, refused to give the said Senators a call of the roll for the ayes and nays, and we hereby protest against the ruling of the President of the Senate, regarding it as the right of Senators and a question of the highest privilege to have a call of the Senate for the ayes and nays when demanded at the proper time.

JESSE J. SPANN, Senator of Rush.

E. H. BUNDY, Senator of Henry.

E. R. WILSON, Senator of Jefferson.

G. H. SHAFFER, Senator of Huntington. ((A H.))

S. T. YANCEY, Senator of Hancock. ((S. P.))

J. J. FOSTER, Senator of Allen. ((T. J.))

The resolution was adopted by the Senate on April 8, by a vote of 26-20. The vote on the passage of the resolution was reconsidered and the motion was laid on the table by a vote of 26-20.

[*Laws, Fifty-second Session, 730.*]

House Joint Resolution No. 7 proposing an amendment to the Constitution of the State of Indiana, by inserting article seventeen, forever prohibiting the manufacture, sale, or keeping for sale, in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors, except for scientific, medical, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes.

*Resolved by the General Assembly of the State of Indiana, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the*



electors of said State, viz: Amend by adding thereto article seventeenth, so as to read as follows:

Section 1. The manufacture, sale, or keeping for sale, in said State spirituous, vinous, malt liquors, or any other intoxicating liquors, except for medical, scientific, mechanical, and wines for sacramental purposes, shall be and is hereby forever prohibited in the State of Indiana.

Sec. 2. The General Assembly of the State of Indiana shall provide by law in what manner, by whom and at what places such liquors shall be manufactured or sold for medical, scientific, mechanical and sacramental purposes.

**337. Prohibiting the Manufacture and Sale of Intoxicating Liquors (March 22, 1881).**

On March 22, Mr. Abner H. Shaffer, a Republican, introduced substantially the same resolution in the Senate. The resolution was referred to the Committee on Temperance and obviously no report was made and the resolution was not subsequently considered.

*[Senate Journal, Fifty-second Session, 692.]*

Senate joint resolution, proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale or keeping for sale, in the State of Indiana, spirituous, vinous, malt or any other intoxicating liquors, except for scientific, medical, mechanical, and wine for sacramental purposes, and providing for regulating sales for said purposes;

*Resolved by the Senate of the State of Indiana, the House of Representatives concurring,* That the following amendment be, and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz:

Amend by adding Article 17, so as to read as follows:

Section 1. The manufacture, sale, or keeping for sale in said State, spirituous, vinous or malt liquors, or any other intoxicating liquors, except for medical, scientific, mechanical, and wines for sacramental purposes, shall be, and is hereby forever prohibited in the State of Indiana.

Sec. 2. The General Assembly of the State of Indiana shall provide by law in what manner, by whom, and at what places such liquors shall be sold or manufactured, for medical, scientific, mechanical and sacramental purposes.

*Resolved,* That in submitting this amendment to the electors of



the State, to be voted on, it shall be designated as Amendment No. 1.

**338. Governor Porter's Reference to Woman Suffrage (January 10, 1881).**

The sentiment in favor of extending the right of suffrage to women was wide-spread in 1881. Memorials and petitions asking that a constitutional amendment be adopted extending the right of suffrage to women were presented from Henry, Howard, Boone, Clinton, Blackford, Gibson, Parke, Marshall, Fulton, Wayne, Huntington, Wells, Marion, Hancock, Shelby, Parke, Vermillion, Franklin, Ripley, Brown, Monroe, Bartholomew, Tippecanoe, Decatur, St. Joseph, Starke, Spencer, Perry, Hamilton and Grant counties, and from the city of Indianapolis. Several petitions from the citizens of the State generally were also presented. A joint resolution was likewise under consideration requesting the senators and representatives in Congress from Indiana to favor the passage of an amendment to the Federal Constitution "prohibiting the disfranchisement of citizens of the United States on account of sex," but this memorial failed to pass. On January 28, Mr. John W. Furnas introduced a bill in the House "to extend the elective franchise in elections for the choice of electors for President and Vice-President of the United States to certain classes of women therein designated." This bill was referred to the special committee on female suffrage which had been appointed on January 19. On February 9, the bill was reported back to the House with a unanimous recommendation that it pass and the bill was advanced to engrossment. On February 16 the bill came up for third reading in the House; a recess of one hour was taken "for the purpose of hearing the ladies on the subject." After addresses on the subject of woman suffrage were given by Mesdames Haggart and Gouger, the suffrage bill was taken up for third reading. By a vote of 49-35, the bill was postponed and made the special order for February 22, on which day the measure was rejected by a vote of 43-46.

*[House Journal, Fifty-second Session, 87.]*

All these ameliorations, so just and wise, which have affected society far more than many measures that have divided parties and excited party frenzy, have been accomplished without having once, it is believed, been accompanied by a party division, or by party strife, or by any public excitement. They have been merely the reflections of a more and more enlightened public opinion. Contemporaneously with these ameliorations, women have been admitted to a part in the management of educational, benevolent and penal institutions. The intelligence, fidelity and feminine delicacy with which generally they have performed their duties, are universally acknowledged.

The art or organization, of working with unity and efficiency in considerable numbers, has been learned by them, and this is one of

the elements best fitted to prepare them, in the fullness of time, for the higher and more important public duties which may well be expected to be devolved upon them. I am informed that certain ladies of high mental endowments and large culture, whose lives and example, as wives and mothers, have won for them in the communities in which they live, the greatest possible respect, will ask to be heard by you in person in an application to have an amendment of the Constitution submitted to the people, which shall provide for conferring upon women the right of suffrage. Without desiring to obtrude an opinion upon you concerning the wisdom of such a provision, I trust that the most worthy and respectable ladies who will present the application, will be received by you with the gallant and generous hospitality to which their lives and character so justly entitle them.

### 339. **Conferring the Right of Suffrage on Women (March 15, 1881).**

On March 15, Mr. John W. Furnas introduced a resolution in the House proposing a constitutional amendment conferring the right of suffrage on women. The resolution was referred to the special committee on female suffrage. On April 7, the resolution was reported back to the House and was passed by a vote of 62-24, and reported to the Senate. The resolution passed the Senate on April 8, by a vote of 27-18.

[*Laws, Fifty-second Session, 721.*]

House Joint Resolution No. 8 proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana.

*Be it Resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of Article 2 thereof, so that it will read as follows:

Section 2. In all elections, not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every person of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and who shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his or her intention to become a citizen of the United States, conformably to the laws of the United States on the

subject of naturalization, shall be entitled to vote in the township ward or precinct where he or she may reside, if he or she shall have been duly registered according to law.

*Resolved*, That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 4.

#### 340. **Conferring the Right of Suffrage on Women (March 22, 1881).**

On March 22, Mr. Simon P. Yancey, a Republican introduced the same woman suffrage amendment in the Senate. The Committee on Revision of Laws to which the resolution was referred reported favorably. On April 8, the resolution was considered in conjunction with House joint resolution No. 8 and the Senate resolution was laid aside and the House resolution matured instead.

[*Senate Journal, Fifty-second Session, 693.*]

Joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of Article 2 thereof so that it will read as follows:

Sec. 2. In all elections, not otherwise provided for by this constitution every citizen of the United States of the age of twenty-one years and upwards who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election; and every person of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have disclosed his or her intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township, ward or precinct where he or she may reside, if he or she shall have been duly registered according to law;

*Resolved*, That in submitting this proposition to the electors to be voted upon it shall be designated as Amendment No. 1.

#### 341. **Qualifications to Practice Law (March 22, 1881).**

On March 22, Mr. Simon P. Yancey introduced a resolution in the Senate proposing an amendment to the Constitution prescribing the qualifica-

tions necessary to practice law. The amendment proposed age, residence and character qualifications only. The resolution was referred to the Committee on the Revision of Laws, who made a favorable report on April 5. The report was concurred in on April 7. On April 8, the resolution was referred to a special committee of three with instructions to strike out Section 21 of Article 7 of the Constitution. The resolution was reported back with the proper amendment but apparently no further action was taken.

[*Senate Journal, Fifty-second Session, 694.*]

A joint resolution, proposing an amendment to Section 21, Article 7, of the Constitution:

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 21, of Article 7 thereof, to read as follows:

Sec. 21. Every person who is a citizen of the United States, and of this State, of the age of twenty-one years and upwards, of good moral character, and every person of foreign birth resident in this State, of the age of twenty-one years and upwards, of good moral character, who shall have resided in the United States for one year and in this State for the six months next preceding, and shall have declared his or her intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to admission to practice law in all courts of justice.

*Resolved,* That in submitting this amendment to the electors of the State, to be voted on, it shall be designated as Amendment No. 2.

### 342. Membership of the Supreme Court (March 22, 1881).

On March 22, Mr. Daniel W. Comstock, a Republican, introduced a resolution in the Senate proposing an amendment to the Constitution fixing the membership of the Supreme Court at not less than five nor more than seven. On April 7, the Judiciary Committee to which the resolution was referred submitted a favorable report. On April 8, a motion was made to recommit to special committee of three, with instructions to amend Section 2 of Article 7 of the Constitution so as to read as follows:

Sec. 2. The Supreme Court shall consist of such number of judges as shall be fixed from time to time by the General Assembly, who shall hold their office for six years if they so long behave well, and a majority of whom\* shall form a quorum.

This motion, together with an additional proposal to fix the maximum number of judges at nine, was rejected. The original resolution then failed to pass by a vote of 18-23. On April 15, by a vote of 25-14, the vote on the pas-

\*((The original reads one instead of whom.))



sage of this resolution was reconsidered. The resolution was then rejected by a vote of 14-25. Later the same day, another vote on the resolution was called for, and the measure passed by a vote of 33-7. As this was the last day of the session, the resolution was never reported to the House.

*[Senate Journal, Fifty-second Session, 713.]*

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to wit: Amend Section 2 of Article 7, to read: Sec. 2. The Supreme Court shall consist of not less than five nor more than seven judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well.

#### **343. Term of Prosecuting Attorney (April 15, 1881).**

On April 15, Mr. John E. Thompson introduced a joint resolution in the House, by request, providing for the election of a prosecuting attorney for each county and fixing his term at four years instead of two. The resolution was referred to the Judiciary Committee but was never reported back to the House.

*[House Journal, Fifty-second Session, 1489.]*

House joint resolution No. 12, proposing to amend Section 2, Article 11 of the Constitution of the State of Indiana.

#### **344. Membership of General Assembly (January 13, 1881).**

Many people believed that the membership of the General Assembly was far in excess of what was actually required to efficiently discharge the duties of a law-making body, and that the expense incident thereto was unnecessary. In response to this sentiment, Mr. Charles Kahlo, a Republican, introduced a resolution in the Senate on January 13, recommending the desirability of a reduction of the number of members of the House and Senate. The resolution was laid on the table for reference.

*[Senate Journal, Fifty-second Session, 86.]*

WHEREAS, The present numbers of the General Assembly as fixed by statute is largely in excess of the number absolutely necessary for equally as good as well as less expensive legislation; therefore, be it

*Resolved,* That the Committee on Apportionment be and is hereby instructed to inquire into the expediency, practicability and constitutionality of reducing the number of State Senators to thirty and members of the House of Representatives to sixty, with a fixed salary per annum for each, and that said committee



report the result of their examination and decision by bill, or otherwise, at the earliest period practicable.

No further action on this subject was taken until March 28 when Mr. Kahlo introduced a resolution embodying the recommendation contained in his measure of January 13 and which was designed to amend the constitution so as to reduce the number of representatives to 60 and the number of senators to 30. The resolution was referred to the Judiciary Committee who made a favorable report on April 6. On April 8, the resolution failed to pass by a vote of 9-32.

*[Senate Journal, Fifty-second Session, 786.]*

Joint Resolution No. 16, proposing amendment to Section 2 of Article 4 of the Constitution of the State.

**345. Duration of Sessions of General Assembly (March 28, 1881).**

On March 28, Mr. George W. Grubbs, a Republican, introduced a resolution in the Senate proposing to amend the Constitution so as to fix the length of regular sessions at 100 days and special sessions at 30 days. The Judiciary Committee, to which the resolution was referred, submitted a favorable report and the resolution was adopted by the Senate on April 8 by a vote of 34-8; and was reported to the House on the following day. Apparently the House took no action on the measure.

*[Senate Journal, Fifty-second Session, 786.]*

Joint Resolution No. 17, proposing amendment to Section 29 of Article 4 of the Constitution of the State.

**346. Proposing an Unspecified Amendment (March 29, 1881).**

On March 29, Mr. Nathaniel R. Lindsay, a Republican, introduced a resolution in the House proposing an amendment to the Constitution. The character of the amendment is not specified. The resolution was referred to the Committee on the Revision of Statutes.

*[House Journal, Fifty-second Session, 1232.]*

House Joint Resolution No. 11, proposing an amendment to the Constitution of the State.

**347. Governor Gray Recommends Calling a Constitutional Convention (January 8, 1881).**

In his message to the General Assembly on January 8, 1881, Governor Gray recommended the calling of a constitutional convention to consist of 50 delegates. The increase of the State in wealth and population and the fact that many of the provisions of the Constitution were obsolete, were the reasons which the Governor assigned for a revision of the Constitution.

[*House Journal, Fifty-second Session, 37.*]

It is nearly thirty years since the present Constitution of the State was adopted, during which time the State has increased in population from less than 1,000,000 to nearly 2,000,000. The increase in wealth and business has been equally great. In view of the facts that some of its provisions have become obsolete, and that experience under it has suggested many important changes and amendments, I recommend the calling of a constitutional convention, believing that to be the best mode of revising the organic act of the State. I would further recommend that the convention consist of fifty members, chosen from the senatorial districts. I believe the body would be large enough, and with the old Constitution before them as a guide, many of the provisions of which would undoubtedly be incorporated in the new, the sitting of the convention need not necessarily be protracted for any considerable length of time. But if you should not deem it advisable to call a convention, I recommend the revision of the proposed amendments, and, in addition to those, recommend an amendment making the tenure of all the State offices four years, the incumbent to be eligible only four years in every period of eight years, the election to occur between the presidential elections, so as to eliminate State from National politics. I can see no good reason why the Governor, Lieutenant-Governor, Clerk and Reporter of the Supreme Court should be elected for four years, and the Secretary, Auditor and Treasurer of State for two years. A like provision for equalizing the terms of county officers would doubtless be favorably received.

**348. Governor Porter Opposes a Constitutional Convention (January 10, 1881).**

In his inaugural address of January 10, Governor Porter announced that he was unable to concur in the recommendation of his predecessor as to the calling of a constitutional convention. His reasons for opposing a convention were that there was no necessity for a convention, the Constitution contained "an admirable provision for its own amendment," and the expense would be too great after the people had just "emerged from the financial crisis."

[*House Journal, Fifty-second Session, 83.*]

I regret that I am not able to concur with my immediate and respected predecessor, in his opinion that a convention ought to be called to revise our present Constitution.

I do not believe that there is a necessity for such a convention, and the people would not, in my judgment, so soon after they have

emerged from the financial crisis which has crippled their means of support, patiently incur the needless but great expense incident to its assemblage. The present Constitution contains an admirable provision for its own amendment, without the assembling of a convention. If two successive legislatures shall recommend a particular amendment, it shall then be submitted to the people. This avoids two extremes: the one, of not allowing the Constitution to respond by amendment, with reasonable promptness, to the deliberate will of the people; the other, of hastily placing in the Constitution improvident provisions which it would be difficult to withdraw. By the simple means provided in the Constitution itself ample facilities are furnished for amending that instrument as such amendments may, from time to time, be deemed necessary.

The provisions of the present Constitution are, in the main, wise and satisfactory to the people; they have generally undergone interpretation by the courts, and their construction is fixed and determined. If a new Constitution shall be framed, we shall again be launched upon a sea of doubt, and be compelled to incur the expense and inconvenience, which, in practice, will be found to be great, of having the meaning of its principal provisions settled by judicial construction.

#### **349. Attempts to Call a Constitutional Convention (January 11 and 14, 1881).**

Two attempts were made during the 52d session to provide for the calling of a constitutional convention. One bill was introduced in the Senate and one in the House. Neither enlisted much support. The senate bill was introduced on January 11, by Mr. Jason B. Brown, a Democrat. On January 14, the bill was referred to a committee of one from each congressional district. On January 19 the committee reported that so far as the construction of the bill was concerned it was "sufficient for the purpose and object it has in view; but the committee declines to make any recommendation upon the subject of the passage of the bill, for the reason that, in the opinion of the committee, the question whether a constitutional convention should be called, and if so, the number of delegates it should be composed of, and the time when the delegates should be elected, and the time when the convention should be held, can be better and more satisfactorily determined by having the bill in its present form considered by the whole Senate, than by burdening the Senate with conflicting reports of the committee." On January 25, the bill was considered as a special order. Several amendments were considered among which was one providing that "the entire session of said convention shall not exceed ninety days," which was rejected. After the consideration of the bill had been repeatedly postponed, it was advanced to engrossment on February 11, and failed to pass by a vote of 21-28.

[*Senate Journal, Fifty-second Session, 62.*]

Senate bill No. 3. An act to provide for the call of a convention of the people of the State of Indiana to revise, amend or alter the constitution of said State, or to make a new Constitution for said State, and to provide for submitting said new Constitution to a vote of the qualified voters of said State of Indiana.

The House bill providing for the calling of a constitutional convention was introduced on January 14. On January 19, the bill was referred to the Committee on Rights and Privileges. On January 27, the committee recommended that the bill be laid on the table and the report was concurred in.

[*House Journal, Fifty-second Session, 168.*]

House bill No. 99. A bill for an act to provide for the call of a convention of the people of the State of Indiana, to revise, amend, or alter the Constitution of said State.

**350. Duration of Legislative Sessions—Governor Porter's Reference (January 10, 1881).**

Of the quasi-constitutional questions considered or adverted to during the 52d session, two are of especial importance. The first of these was a reference in the inaugural address of Governor Porter to the length of legislative sessions, in which he expressed the belief that there was a "popular conviction" that "the clause limiting the sessions of the legislature to sixty days" was a wholesome restriction.

[*House Journal, Fifty-second Session, 93.*]

The long retention in the Constitution, without an effort to change it, of the clause limiting the sessions of the legislature to sixty days, shows that the sense of the people is, that all needed measures of legislation can be properly considered within that time, except under extraordinary circumstances. This popular conviction ought to be treated with honest respect, and that respect ought to be exhibited by a diligent and faithful effort to get through with the business which will be before you within the period limited for a regular session. This can be done most effectually by husbanding at the early part of the session the valuable time often lost by procrastination and by not proceeding at once strenuously to the task in hand. It would give me great pleasure to see this legislature honorably distinguished by the zealous promptitude with which it shall enter upon its work, and I particularly urge the members who have had previous legislative experience to use their best efforts to get the machinery necessary for the work of legislation in effective order as soon as possible.

**351. Ex-Parte Opinions of the Supreme Court (January 12, 1881).**

The second of these two measures was designed to provide for the submission of legal questions by the General Assembly to the Supreme Court for an opinion before placing a proposed law of doubtful constitutionality on the statute books. This proposition was embodied in a bill and was introduced in the House on January 12. On January 18, the bill passed the House by a vote of 52-46 and was referred to the Senate. On January 20, the bill was referred to the Judiciary Committee. On February 3, the committee recommended that the bill be indefinitely postponed, and on February 14, the report was concurred in.

*[House Journal, Fifty-second Session, 128.]*

House bill No. 27. A bill providing for the submission of legal questions by the General Assembly, or either House thereof, to the Supreme Court for its decision, and declaring an emergency.

**352. Governor's Election Notice (February 21, 1881).**

The act providing for the resubmission of the pending constitutional amendments required the Governor to issue a proclamation notifying the electors of the State of the approaching election. The act was approved on February 21, and on the same day the Governor issued the following election notice.

*[Secretary of State's Report, 1881, 148.]*

Executive Department  
of the State of Indiana.

By the first section of an act of the General Assembly of the State of Indiana, entitled "An act providing for the submission to the electors of the State of Indiana for ratification or rejection, the constitutional amendments proposed to and adopted by the General Assemblies of said State, at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others, providing penalties for violations thereof, and repealing all laws in conflict therewith, and declaring an emergency," approved February 21, 1881, it is enacted that certain proposed amendments of the Constitution of this State shall be submitted to the electors of the State, for their ratification or rejection, at a special election to be held for that purpose on Monday, the fourteenth day of March, 1881. These proposed amendments of the Constitution are in the words and figures following, to-wit:

**Amendment No. 1.**

Amend Section 2 of Article 2, so as to read as follows: Section 2. In all elections, not otherwise provided for by this con-



stitution, every male citizen of the United States of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

#### Amendment No. 2.

By striking out the words, "No negro or mulatto shall have the right of suffrage," contained in Section 5 of the second article of the Constitution; and,

#### Amendment No. 3.

Amend Section 14 of the second article to read: Section 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for, and shall also provide for the registration of all persons entitled to vote.

#### Amendment No. 4.

Strike the word "white" from Sections 4 and 5 of Article 4.

#### Amendment No. 5.

Amend the fourteenth clause of Section 22 of Article 4 to read as follows: In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required.

#### Amendment No. 6.

Amend Section 1 of the seventh article to read: Section 1. The judicial powers of the State shall be vested in a Supreme Court,

circuit courts, and such other courts as the General Assembly may establish.

Amendment No. 9.

Strike out all the Sections of the thirteenth article, and in lieu thereof, insert the following: Section 1. No political or municipal corporation, in this State, shall ever become indebted, in any manner or for any purpose, to an amount, in the aggregate, exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount, given by such corporation, shall be void; *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense to such amount as may be requested in such petition.

By the ninth section of said act it is made the duty of the Governor, immediately upon the passage of the act, to issue a proclamation, notifying the electors of the State of the election in said act provided for.

Wherefore, I, Albert G. Porter, Governor of the State of Indiana, in pursuance of the requirement contained in said act, do issue this proclamation, notifying the electors of the State that on said fourteenth day of March, 1881, a special election will be held at the several places for holding elections in the several counties of this State, for the purpose prescribed in the above mentioned act.

In Witness Whereof, I have hereunto subscribed my hand and caused the seal of the State to be hereto  
(SEAL) affixed, at the city of Indianapolis, this twenty-first day of February, A.D. 1881.

ALBERT G. PORTER.

By the Governor:

E. R. HAWN, Secretary of State.

**353. Governor's Proclamation Declaring the Amendments Adopted (March 24, 1881).**

The election was held on March 14, 1881, and each amendment received a substantial affirmative majority. Accordingly, on March 24, the Governor issued his proclamation announcing the result of the election and declaring the amendments adopted. See Appendix IX.

[*Secretary of State's Report, 1881, 153.*]

Executive Department  
of the State of Indiana.

WHEREAS, At the session of the General Assembly of the State of Indiana, which began at Indianapolis on the fourth day of January, 1877, certain amendments to the constitution of this State were proposed in the Senate, which said proposed amendments were afterwards agreed to by a majority of the members elected to each of the two houses, and were, with the yeas and nays thereon, entered on their journals and referred to the General Assembly to be chosen at the then next general election; and

WHEREAS, In the General Assembly so next chosen said proposed amendments were agreed to by a majority of all the members elected to each house; and

WHEREAS, Afterwards, by an act of the General Assembly, approved February 21, 1881, entitled "An act providing for the submission to the electors of the State of Indiana, for ratification or rejection, the Constitutional amendments proposed to and adopted by the General Assemblies of said State, at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others, providing penalties for violations thereof, and repealing all laws in conflict therewith, and declaring an emergency," said proposed amendments were submitted to the electors of the State for their ratification or rejection, at a special election held for that purpose on Monday, the fourteenth day of March, 1881; and

WHEREAS, It is provided in said act that the Secretary of State shall, as soon as possible after the election, determine from the certificates required in said act to be given by the clerks of the several counties, the total vote cast in the State for and against each proposed amendment separately; and also the total number of electors who voted at the election, and that the Governor shall immediately issue and publish his proclamation, declaring therein the number of votes cast in the State, for and against each proposed amendment separately, and also the total number of electors who voted at the election, and that if it shall appear that the number of votes cast in the State for any one or more of said proposed amendments was greater than the number of votes cast against the same amendment, and equal to a majority of all the electors who voted at the election, then each such amendment shall be deemed and taken to have been ratified by the electors of the State and become a part of the Constitution; and

WHEREAS, It is further provided in said act that, in all proceedings had thereunder, said proposed amendments may be designated by number, as in the preamble of said act, except in the ballots; and

WHEREAS, It has been certified to me by the Secretary of State that the total number of electors who voted at said election is one hundred and seventy-two thousand and nine hundred, and that the number of votes cast in favor of the proposed amendments designated in the preamble of said act as Amendment No. 1, is one hundred and twenty-three thousand, seven hundred and thirty-six, and that the number of votes cast against it is forty-five thousand, nine hundred and seventy-five; that the number of votes cast in favor of the proposed amendment designated in the preamble of said act as Amendment No. 2, is one hundred and twenty-four thousand, nine hundred and fifty-two, and that the number of votes cast against it is forty-two thousand, eight hundred and ninety-six; that the number of votes cast in favor of the proposed amendment designated in the preamble of said act as Amendment No. 3, is one hundred and twenty-eight thousand and thirty-eight, and that the number of votes cast against it is forty thousand, one hundred and sixty-three; that the number of votes cast in favor of the proposed amendment designated in the preamble of said act as Amendment No. 4, is one hundred and twenty-five thousand, one hundred and seventy, and that the number of votes cast against it is forty-two thousand, one hundred and sixty-two; that the number of votes cast in favor of the proposed amendment designated in the preamble of said act as Amendment No. 5, is one hundred and twenty-eight thousand, seven hundred and thirty-one, and that the number of votes cast against it is thirty-eight thousand three hundred and forty-five; that the number of votes cast in favor of the proposed amendment designated in the preamble of said act as Amendment No. 6, is one hundred and sixteen thousand, five hundred and seventy, and that the number of votes cast against it is forty-one thousand, four hundred and thirty-four; and that the number of votes cast in favor of the amendment designated in the preamble of said act as Amendment No. 9, is one hundred and twenty-six thousand, two hundred and twenty-one, and that the number of votes cast against it is thirty-six thousand, four hundred and thirty-five; and

WHEREAS, It appears that the number of votes cast for each of said several proposed amendments is greater than the number of

votes cast against the same, and exceeds a majority of all the electors who voted at said election:

Now, therefore, I, Albert G. Porter, Governor of the State of Indiana, do hereby issue and publish this my proclamation, and do declare that the number of votes certified to me as aforesaid by the Secretary of State as the number of votes cast in the State at said election for and against each of said proposed amendments is the true number of votes so cast, and that the number of electors certified to me as aforesaid by the Secretary of State as the whole number of electors who voted at said election, is the whole number of electors who voted at said election; and I do declare and proclaim that each of said amendments designated in the preamble of said Act, respectively, as Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, and Amendment No. 9, shall be deemed and taken to have been ratified by the electors of the State, and to have become part of the Constitution, and I do declare and proclaim that each of said amendments is now part of the Constitution of the State of Indiana.

In Witness Whereof, I have hereunto subscribed my name and caused the Seal of the State to be hereto  
(SEAL) affixed, at Indianapolis, this twenty-fourth day of March, 1881.

ALBERT G. PORTER.

By the Governor:

E. R. HAWN, Secretary of State.

### 354. Democratic Platform of 1882—Prohibitory Amendment (August 2, 1882).

The Democratic State Convention of 1882 was held on August 2. At the preceding session of the General Assembly a constitutional amendment was adopted prohibiting the manufacture and sale of intoxicating liquors. (See Document No. 336.) The State was thoroughly aroused on this question and strong pressure was brought to bear to secure the adoption of this amendment at the session of the General Assembly of 1883 and its submission to the voters at a special election. By the adoption of the following resolution, the Democratic Party formally condemned sumptuary regulations of this kind and opposed the submission of the amendment at a special election.

[*Indianapolis Sentinel*, August 3, 1882.]

The democratic party is now, as it has always been, opposed to all sumptuary legislation, and it is especially opposed to the proposed amendment to the Constitution of Indiana, known as the



prohibitory amendment, and we are in favor of the submission of said proposed amendment, as well as other proposed amendments, to the people, according to the provisions of the Constitution for its own amendment, and the people have the right to oppose or favor the adoption of any or all the amendments at all stages of their consideration, and any submission of Constitutional amendments to a vote of the people should be at a time and under circumstances most favorable to a full vote, and therefore, should be at a general election.

**355. Republican Platform of 1882—Adoption of Pending Amendments (August 9, 1882).**

The Republican State Convention of 1882 was held in Indianapolis on August 9. There were four constitutional amendments pending action by the ensuing General Assembly providing that the terms of all county officers should be four years, prohibiting the manufacture and sale of intoxicating liquors, conferring the right of suffrage on women and fixing the terms of State officers at four years. (See Documents Nos. 333, 334, 336 and 339.) The Republicans declared themselves in favor of "the submission, from time to time, in the respectful obedience to what has been deemed the popular will, of amendments to the national constitution, and the constitution of the State," and they adopted the following resolution demanding the adoption of the pending amendments and their submission to the voters at a special election.

*[Indianapolis Journal, August 10, 1882.]*

That reposing trust in the people as the fountain of power, we demand that the pending amendments to the Constitution shall be agreed to and submitted by the next legislature to the voters of the State for their decision thereon. These amendments were not partisan in their origin, and are not so in character, and should not be made so in voting upon them. Recognizing the fact that the people are divided in sentiment in regard to the propriety of their adoption or rejection, and cherishing the right of private judgment, we favor the submission of these amendments at a special election, so that there may be an intelligent decision thereon, uninfluenced by partisan issues.

**THE FIFTY-THIRD GENERAL ASSEMBLY (1883).**

The personnel of the 53d General Assembly was as follows: Senate, Republicans 22 and Democrats 28; House, Republicans 41, Democrats 58 and Greenback 1. At the preceding session, four amendments were adopted and manifestly were awaiting action by the session of 1883. The proposed amend-

ments were designed to prohibit the manufacture and sale of intoxicating liquors, to extend the right of suffrage to women and to fix the term of State and county officers at four years. One additional amendment was proposed at the 53d session providing that a vote of two-thirds of the members of the General Assembly should be required in adopting amendments to the Constitution. An attempt was also made to provide for the calling of a constitutional convention. At the preceding session, the question was raised whether, since there were amendments pending action by the people in 1881, the General Assembly of that year could legally adopt any additional amendments. The serious consideration of this question was subsequently discontinued and it was generally assumed that the General Assembly had not exceeded its rights in the adoption of these amendments. A state-wide campaign in favor of the adoption of the suffrage and liquor amendments was carried on and several members of the legislature were elected on that issue. During the 53d session more than 270 petitions, bearing over 30,000 names, were submitted in the House and an equal or greater number in the Senate in favor of the adoption of the liquor and suffrage amendments and their submission to the people at a special election.

### 356. Petitions in Favor of State-Wide Prohibition.

Of the few petitions and memorials preserved, the following in favor of the state-wide prohibition amendment will serve as examples.

#### PETITION OF FACULTY AND STUDENTS OF INDIANA ASBURY UNIVERSITY.

[*Senate Journal; Fifty-third Session, 297.*]

GREENCASTLE, January 4, 1883.

*To the General Assembly of the State of Indiana:*

The undersigned, members of the Faculty and students of the Indiana Asbury University, believing that ours is a "government of the people by the people, and for the people," believing, also, that our legislators can have no just motive for withholding from the people the right to express, by individual ballot, their several views upon any question of organic law, hereby most respectfully petition the honorable Senate and House of Representatives to take such early action as shall secure the repassage of the pending prohibitory constitutional amendment and its submission to the people for their final ratification or rejection.

That the question may be entirely removed from partisan politics, and its merits be fairly presented to each elector, we further petition and ask that the so-called proposed prohibitory amendment be submitted to the people, at an election called especially for the purpose of amending the constitution.

QUARTERLY CONFERENCE OF METHODIST EPISCOPAL CHURCH OF  
WINCHESTER.

[*Senate Journal, Fifty-third Session, 300.*]

*To the General Assembly of the State of Indiana:*

WHEREAS, It has been the recognized right of government to prohibit or destroy anything detrimental to the public good, as decided by the Supreme Court of the United States; and,

WHEREAS, The liquor traffic—the foe of God and man—with its long train of crime and wretchedness, stands judged and condemned by large multitudes of good and intelligent people; and

WHEREAS, The present laws of the State, adopted for the pretended regulation of the sale of intoxicating liquors as a beverage, have failed to protect the inhabitants of the State against the excessive taxation, pauperism, crime and the destruction of morals, resulting from the liquor traffic; and

WHEREAS, The last session of the General Assembly of the State of Indiana passed a joint resolution, intended as an amendment to our State Constitution forever prohibiting in the State the manufacture and sale of intoxicating liquors as a beverage; therefore,

*Resolved*, That we, the Quarterly Conference of the Methodist Episcopal Church of Winchester, Indiana, do most heartily approve the action of the last General Assembly of the State of Indiana, in voting to submit to a vote of the people such an amendment to our State constitution.

*Resolved*, That we hereby memorialize, request, petition and pray your honorable body to agree to said amendment, and vote to submit the same to a direct vote of the people at a special election.

R. D. ROBINSON,  
Presiding Elder.  
E. H. BUTLER,  
Secretary.  
H. N. HERRICK,  
Pastor.

WINCHESTER, IND., December 10, 1882.

## HOUSE RESOLUTION RELATIVE TO TEMPERANCE LEGISLATION.

[*House Journal, Fifty-third Session, 391.*]

MR. SPEAKER:

WHEREAS, The people of Indiana seem to require something in the interest of temperance of this General Assembly;

WHEREAS, The movement in the direction of any amendment to the constitution of the State is declared a failure; therefore, be it

*Resolved*, That the committee on temperance of this House be requested to report a bill looking to the rigid enforcement of our present excellent temperance law.

### 357. Woman Suffrage.

Meantime it was suggested that the proposed amendments had not been regularly adopted because they had not been entered at length in the journals of the two Houses of the preceding General Assembly and this apparently was the only controverted question when the General Assembly convened in 1883. The interest in the feminist movement was reflected in the General Assembly by the appointment of a joint committee of the two Houses to consider all questions pertaining to women's rights. On January 5, the Senate adopted a resolution "That a special committee of five be appointed by the Chair to take into consideration such matters as may be referred to them concerning woman suffrage." On January 24, the Senate adopted a resolution "That a committee be appointed, consisting of four Senators and five Representatives, to be known as the Committee on Women's Claims, to which committee all matters affecting the rights, privileges or claims of the women of Indiana shall be referred," and on the same day this resolution was concurred in by the House. A movement was also on foot to secure an amendment to the federal Constitution extending the right of suffrage to women. On January 25, Senator Foulke introduced the following resolution on behalf of the Equal Suffrage Society of Indianapolis.

#### PETITION OF EQUAL SUFFRAGE SOCIETY OF INDIANAPOLIS.

[*Senate Journal, Fifty-third Session, 293.*]

INDIANAPOLIS, January 16, 1883.

*To the Honorable President and Senators:*

The Equal Suffrage Society of Indianapolis (a list of members of which is appended to this paper), believing the claim of women in Indiana to the right of suffrage to be just, and in accordance with the spirit of our republican institutions, ask your honorable body to submit to the qualified voters of the State, at a special

election, an amendment to the Constitution of the State, giving to all its citizens, without distinction of sex, the right of suffrage.

We also ask your honorable body to pass a resolution requesting our Senators and Representatives in Congress to vote for a sixteenth amendment to the Constitution of the United States, giving the right of suffrage to all the women of our nation.

We also ask that you appoint a special committee to consider the question of equal suffrage in this State.

Very respectfully,

MARY E. N. CAREY,  
President.

CLAIRE A. WALKER,  
Treasurer.

M. C. RARIDEN, Secretary.

#### AMENDMENT TO FEDERAL CONSTITUTION (FEBRUARY 1, 1883).

A week later, on February 1, Senator Foulke introduced the following concurrent resolution on the same subject.

*[Senate Journal, Fifty-third Session, 384.]*

*Resolved by the Senate of the State of Indiana, the House of Representatives concurring,* That we recommend to our Representatives in Congress, and instruct our Senators, to vote for and urge the passage of Senate Bill No.—, now pending in the Congress of the United States, providing an amendment to the Constitution of the United States, as follows, to-wit: That the right of citizens to vote shall not be denied or abridged by the United States, or any State thereof, on account of sex.

#### 358. Governor Porter Considers the Amendments Regularly Adopted (January 5, 1883).

In his message to the General Assembly on January 5, Governor Porter summarized the various events of the controversy relative to the pending amendments, and, citing the Wabash and Erie Canal amendment as a precedent, advised the legislature that in his judgment the amendments had been regularly adopted.

*[House Journal, Fifty-third Session, 46.]*

#### CONSTITUTIONAL AMENDMENTS.

The first section of the sixteenth article of the State Constitution is in the following language:

Any amendment or amendments to this Constitution may



be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendments shall with the yeas and nays thereon, be entered on their journals and referred to the General Assembly, to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

At the special session of the General Assembly in 1881, several joint resolutions were introduced, which were passed by a vote of a majority of the members elected to each of the two Houses, proposing certain amendments to the Constitution. The titles of the several resolutions, and their numbers, were entered on the journals of the two Houses, together with the yeas and nays on the passage. An enrolled copy of each resolution, containing the amendment set out at full length, was signed by the President of the Senate and the Speaker of the House of Representatives, transmitted to the Governor, and filed by him, in conformity to law, in the office of the Secretary of State. In the canvass for the election of senators and representatives to the present General Assembly, the point, it is believed, was not raised that proper steps had not been taken in the last General Assembly to enable the present one to consider the amendments. Since the election, however, the point has been raised, through the public press, that the proposed amendments are not in a condition to be considered by the present General Assembly, because, it is said, they were not entered at length in the journals of the two Houses of the last General Assembly. Neither of the points raised has been settled in this State by any judicial decision. An executive construction was given, however, to one of them in a message of Governor Baker, in the case of what is known as the Wabash and Erie Canal amendment. That amendment was not entered at length upon the journal of either of the two Houses. The resolution by which the amendment was proposed was referred to in the journal of each House by its title merely, and the enrolled copy thereof was signed by the presiding officer of each House, and was duly filed in the office of the Secretary of State. Governor Baker main-

tained that this was a sufficient compliance with the terms of the Constitution.

The Constitution requires, in the case of bills, that upon the passage thereof the vote shall be taken by yeas and nays and entered upon the journals of the two Houses. In a case where the point was urged that an act was not in force because no entry of the ayes and nays on its passage appeared in the journals, the Supreme Court held that the signatures of the presiding officers were conclusive evidence of the passage.

The constitution is silent respecting the manner in which a proposed amendment shall be referred from the first to the second General Assembly. The main object, no doubt, is to get it before the second Assembly. If the genuine resolution passed comes before the second Assembly, and is acted upon, the object of a reference would seem to have been attained, and the purpose of the framers of that instrument to have been carried out. There was, I believe, no formal reference of the amendments adopted in 1881 by the first to the second General Assembly.

In the canvass last autumn it is said that some of the senators and representatives who were chosen at the November election publicly pledged themselves that, if they were chosen, they would vote at the present session to submit the amendments to the electors at a special election. Without saying anything respecting the merits of the several amendments, I can frankly express a belief that pledges upon which electors were induced to vote for gentlemen holding seats in either of the two Houses of this Assembly will not be disregarded except for overwhelming reasons.

**359. Certified Proceedings on the Pending Amendments (January 5 and 12, 1883).**

On January 5, a resolution was introduced in the Senate requesting the Secretary of State to furnish the Senate with the official proceedings relative to the adoption of the pending constitutional amendments. The resolution was neither adopted nor rejected.

*[Senate Journal, Fifty-third Session, 14.]*

*Resolved*, That the Secretary of State be requested to furnish the Senate with a certified copy of the proceedings of the General Assembly (as filed in his office) on the adoption of the amendments to the Constitution in the session of 1881; also in the adoption of the amendment during the session of 1871, known as the "Wabash and Erie Canal Amendments," and that he further

certify whether the record of proceedings in the adoption of other amendments than those referred to shows that the Constitution was complied with in this provision, to-wit: "Such proposed amendments shall, with the ayes and nays thereon, be entered on their journals and referred to the next General Assembly."

A similar resolution was introduced in the House on January 12, but was laid on the table by a vote of 60-39.

*[House Journal, Fifty-third Session, 136.]*

WHEREAS, Certain resolutions, proposing amendments to the State Constitution, were passed at the last session of the General Assembly, and,

WHEREAS, Said enrolled resolutions, in accordance with the statutory requirement, were deposited in the Secretary of State's office, therefore, be it

*Resolved*, That the clerk of this House request the Secretary of State to furnish to this House certified copies of all said resolutions proposing amendments to the State Constitution.

### 360. Official Inquiry into Validity of Amendments (January 12, 1883).

Later the same day, January 12, a resolution was proposed in the House directing the Judiciary Committee to ascertain whether any constitutional amendments were actually pending. An attempt to lay the resolution on the table was lost by a vote of 38-56. The following proposed substitute was rejected by a vote of 39-56.

*[House Journal, Fifty-third Session, 142.]*

WHEREAS, That during the session of the last General Assembly there were certain resolutions introduced proposing amendments to the State Constitution, and

WHEREAS, Said resolutions were passed, having received a majority of all votes of the members elect to the last General Assembly, and

WHEREAS, Said enrolled resolutions, proposing said amendments, in accordance with the statutory provision, have been deposited in the Secretary of State's office; therefore, be it

*Resolved*, That the clerk of this House be instructed to call upon the Secretary of State for certified copies of all resolutions proposing amendments to the Constitution, passed in the General Assembly of 1881, and present the same to this House as soon as possible.

The resolution was then adopted by a vote of 56-38.

[*House Journal, Fifty-third Session, 141.*]

*Resolved*, That the Judiciary Committee be and is hereby directed to ascertain and report to this House, on or before Friday next, what, if any, proposed amendments to the constitution of the State were agreed to by a majority of the members elected to each of the two Houses of the Fifty-second General Assembly, and properly referred to this Fifty-third General Assembly.

On the same day a similar resolution was adopted by the Senate by a vote of 27-21.

[*Senate Journal, Fifty-third Session, 110.*]

WHEREAS, The Constitution provides that any amendments to it may be proposed in either House of the General Assembly; and,

WHEREAS, The Constitution further provides that any proposed amendment or amendments, when agreed to by a majority of the members elected to each of the two Houses, shall, together with the ayes and nays thereon, be entered on the Journals and referred to the General Assembly to be chosen at the next general election; and

WHEREAS, It is known that certain amendments were under consideration in the last General Assembly; and

WHEREAS, If any proposed amendment or amendments were agreed to by a majority of the members elected to each House, such proposed amendment or amendments should be found on the Journals; therefore,

*Resolved*, That the Committee on Judiciary be instructed to examine the Journals of the House of Representatives and Senate of the last General Assembly, and report at an early day what, if any, amendment or amendments to the Constitution were proposed by that Assembly and referred to this, and are now on said Journals awaiting the action of this Senate.

### **361. Reports of the Judiciary Committees on Validity of Amendments (January 19, 1883).**

In response to the foregoing resolutions, the House and Senate Judiciary Committees submitted reports on January 19. Three reports were submitted by the House Committee. The first report, signed by the chairman and three other members, held that no amendments had been referred to the 53d General Assembly by its predecessor.

## FIRST REPORT OF HOUSE JUDICIARY COMMITTEE.

[*House Journal, Fifty-third Session, 223.*]

The undersigned, members of your Judiciary Committee, to which was referred House Resolution No. 19, introduced by Mr. Williams, of Knox, have to report that we have examined the Journals of the two Houses of the Fifty-second General Assembly, as directed, and do not find that any proposed amendments to the Constitution of the State were agreed to by a majority of the members elected to each of the two Houses of the Fifty-second General Assembly, and properly referred to this Fifty-third General Assembly.

H. D. McMULLEN,  
SAMUEL W. WILLIAMS, of Knox,  
JOHN R. WILSON, of Marion,  
HORACE HEFFREN, of Washington.

## SECOND REPORT OF HOUSE JUDICIARY COMMITTEE.

The second report was signed by five members of the committee and contended that four amendments had been regularly adopted by the 52d session and referred to the 53d session for consideration. These amendments included the state-wide prohibition amendment, the amendments fixing the terms of State and county officers at four years and the woman suffrage amendment.

[*House Journal, Fifty-third Session, 224.*]

The undersigned members of the Judiciary Committee, to whom was referred House Resolution No. 19, introduced by Mr. Williams, of Knox, directing said committee to ascertain and report to this House what, if any, proposed amendments to the Constitution of the State were agreed to by a majority of the members elected to each of the two Houses of the Fifty-second General Assembly, and beg leave to report that there are on file in the office of the Secretary of State, properly enrolled and authenticated, four proposed amendments to the constitution of the State, which were agreed to by a majority of the members elected to each of the two Houses of the Fifty-second General Assembly, and were properly referred to this Fifty-third General Assembly, viz.:

House Joint Resolution No. 7:

A joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale, or keeping for sale, in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors,



except for scientific, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes.

*Resolved by the General Assembly of the State of Indiana, That the following amendment be and is hereby proposed to the constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz.: Amend by adding thereto article 17, so as to read as follows:*

Section 1. The manufacture, sale, or keeping for sale, in said State, spirituous, vinous, malt liquors, or any other intoxicating liquors, except for medical, scientific, mechanical, and wines for sacramental purposes, shall be, and is hereby, forever prohibited in the State of Indiana.

Sec. 2. The General Assembly of the State of Indiana shall provide by law in what manner, by whom, and at what places such liquors shall be manufactured or sold for medical, scientific, mechanical, and sacramental purposes.

Senate joint resolution No. 6: A joint resolution proposing an amendment to Section 1, Article 6 of the Constitution.

*Resolved by the Senate, the House of Representatives concurring, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby, proposed, to-wit: Amend Section 1 of the sixth article to read:*

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than one term, or four years, in any period of eight years.

*Resolved, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.*

Senate joint resolution No. 7: A joint resolution proposing an amendment to Section 2 of Article 6 of the constitution.

*Resolved by the Senate, the House of Representatives concurring, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of the sixth article to read:*

Sec. 2. There shall be elected in each county by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their office for four years, and

no person shall be eligible to either of said offices more than four years, or one term, in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3:

House joint resolution No. 8: A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the constitution of the State of Indiana be and the same is hereby proposed, to-wit: Amend Section 2 of Article 2 hereof, so that it will read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his or her intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township, ward or precinct where he or she may reside, if he or she shall have been duly registered according to law.

*Resolved*, That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 4.

Respectfully submitted,

WM. D. FRAZER,\*  
GEO. A. ADAMS,  
ANDREW T. WRIGHT,  
S. H. STEWART,  
U. Z. WILEY.

### THIRD REPORT OF HOUSE JUDICIARY COMMITTEE.

A third report was submitted, which is substantially identical with the preceding, and which was signed by two members of the committee.

[*House Journal, Fifty-third Session, 226.*]

The undersigned, members of your Judiciary Committee, to which was referred the resolution introduced by Mr. Williams, of Knox, directing said committee to ascertain and report to this House what, if any, proposed amendments to the Constitution of this State were agreed to by a majority of the members elected to each of the Houses of the Fifty-second General Assembly and

\*((William DeFrees Frazer (or Frazier) was representative from Kosciusko and Wabash counties in 1881 and 1883. There is confusion about the spelling of his name.))

properly referred to this General Assembly, are unable to agree with the other members of said committee. We, therefore, report, as the minority of said committee, that the following proposed amendments to the Constitution of this State were agreed to by a majority of the members elected to each of the Houses constituting the Fifty-second General Assembly of the State of Indiana, and were referred to this General Assembly, namely, a joint resolution proposing an amendment to Section 1, Article 6, of the Constitution:

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby, proposed, to-wit: Amend Section 1 of Article 6 to read:

Section 1. There shall be elected, by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than one term, or four years, in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

A joint resolution, proposing an amendment to Section 2 of Article 6 of the Constitution:

*Resolved, by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for four years, or one term, in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3.

A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit:

Amend Section 2 of Article 2 thereof, so that it will read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and every person of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and who shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his or her intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township, ward or precinct where he or she may reside, if he or she shall have been duly registered according to law.

*Resolved*, That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 4.

A joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale, or keeping for sale, in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors, except for scientific, medical, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes.

*Resolved by the General Assembly of the State of Indiana*, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz.: Amend by adding thereto Article 17, to read as follows:

Section 1. The manufacture, sale, or keeping for sale, in said State, spirituous, vinous, malt liquors, or any other intoxicating liquors, except for medical, scientific, mechanical, and wines for sacramental purposes, shall be and is hereby forever prohibited in the State of Indiana.

Sec. 2. The General Assembly of the State of Indiana shall provide by law in what manner, by whom, and at what places such liquors shall be manufactured or sold for medical, scientific, mechanical and sacramental purposes.

Respectfully submitted,  
CHARLES L. JEWETT,  
JAMES B. PATTEN,  
Of the Judiciary Committee.



## MAJORITY REPORT OF SENATE JUDICIARY COMMITTEE.

Two reports were made by the Senate committee. The majority of the committee reported that no amendments had been set forth on the journals nor was there any evidence that the General Assembly of 1881 intended to refer any such propositions to the General Assembly of 1883, and hence they concluded that no amendments were awaiting action by the 53d General Assembly.

[*Senate Journal, Fifty-third Session, 207.*]

Your Committee on Judiciary, in accordance with instructions contained in a resolution of the Senate, have examined the Journals of the House of Representatives and Senate of the last General Assembly, and respectfully report that, while said Journals show that propositions to amend the Constitution were under consideration in both House and Senate of the General Assembly, and appear to have been in some form agreed to, there is no entry, as commanded by Section 1, Article 16, of the Constitution, upon either of said Journals by which your committee can determine what said propositions were. Nor is there anything upon said Journals to show that either the House of Representatives or Senate of the last General Assembly referred, or intended to refer, any proposition to amend the Constitution to this Assembly.

A majority of your committee, are therefore, of the opinion that there is no amendment to the Constitution purposed by the last General Assembly awaiting the action of this Senate.

R. C. BELL,  
S. B. VOYLES,  
J. B. BROWN,  
J. E. McCULLOCH, ((McCullough))  
FLAVIUS J. VAN VORHIS.  
Committee.

## MINORITY REPORT OF SENATE JUDICIARY COMMITTEE.

A minority of the committee reported that amendments had been adopted and were awaiting action by the 53d General Assembly. These included the prohibition amendment, the term of office of State and county officers and the woman suffrage amendment.

[*Senate Journal, Fifty-third Session, 208.*]

The Judiciary Committee of the Senate, to whom was referred the resolution of the Senator from Marion (Van Vorhis), have had the same under consideration, and a minority of said committee would respectfully report thereon, as follows:



We have examined the printed Journals of the Senate and House of Representatives of the Assembly of 1881, and find thereon the following entries:

On the House Journal, the following:

March 15, 1881.

Mr. Huston, by consent, introduced "House Joint Resolution No. 7," a joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale, or keeping for sale, in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors; *except* for scientific, medical, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes.

That said resolution was then read the first time and referred to the Committee on Temperance.

That on the 29th of March, 1881, said resolution was reported back from the Committee on Temperance with a majority and minority report thereon, the former recommending the passage of the resolution, and the latter that it lie on the table.

That the majority report was concurred in.

That on the 30th day of March, 1881, the said resolution proposing an amendment to the Constitution of Indiana, was agreed to in the House of Representatives by a majority of the members elected to said House, as shown by the following vote, taken by yeas and nays and entered on said Journal, . . .

*Ordered*, That the clerk inform the Senate thereof.

The question being, Shall the title, as read, stand as the title to said joint resolution?

It was ordered.

We find on the Senate Journal the following entries concerning said joint resolution:

That on the 31st day of March, 1881, a message was received from the House informing the Senate of the passage of House Joint Resolution No. 7, a joint resolution proposing an amendment to the Constitution of the State of Indiana, by adding thereto the 17th section (Senate Journal, page 817).

That on the 5th day of April, 1881, Mr. Spann moved to take up House Joint Resolution No. 7, a joint resolution proposing an amendment to the Constitution of the State of Indiana, by adding thereto the 17th section.

And the same was taken up and referred to the Judiciary Committee, and reported back with a majority report recommend-

ing its passage. That it was read a second time on the 7th day of April, 1881 (Senate Journal, page 908), and a third time on the 8th day of April, 1881 (Senate Journal, page 928), and on that day the said resolution was agreed to in the Senate by a majority of the members elected to said Senate, as shown by the following vote taken by ayes and nays, and entered on the Senate Journal, to-wit:

*Question.* Shall the resolution pass? . . .

So the resolution passed.

Title adopted as read.

That on the 9th day of April, 1881, the Speaker of the House of Representatives announced to the House that he had signed enrolled House Joint Resolution No. 7, and on the same day the President of the Senate announced to the Senate that he had signed House Joint Resolution No. 7, and on Monday, April 11, 1881, Albert G. Porter, Governor of Indiana, informed the House of Representatives, by message, that he had received enrolled House Joint Resolution No. 7, and caused it to be filed in the office of the Secretary of State.

We also find by an examination of the House and Senate Journals, that in addition to the joint resolution above referred to, there were three other joint resolutions proposing amendments to the Constitution of the State of Indiana before the last General Assembly, to-wit:

House Joint Resolution No. 8—A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana.

Senate Joint Resolution No. 7—A joint resolution proposing an amendment to Section 2 of Article 6 of the Constitution of Indiana.

Senate Joint Resolution No. 6—A joint resolution proposing an amendment to Section 1, Article 6 of the Constitution. Substantially the same proceedings were had concerning the last three joint resolutions in each branch of the General Assembly, as in the case of House Joint Resolution No. 7, above referred to. Each of said resolutions were agreed to by a majority of the members elected to each of the two Houses, and the yeas and nays thereon were entered on the Journals of each House; and enrolled copies of each of them were duly and properly signed by the President of the Senate and Speaker of the House of Representatives, and filed by the Governor of Indiana in the office of the Secretary of State of Indiana.

We further report, that the joint resolutions above referred to, as shown by said enrolled joint resolutions on file in the office of the Secretary of State, are as follows, to-wit:

Enrolled Joint Resolution No. 7—House of Representatives.

State of Indiana,  
Executive Department.

Received April 9, 1881.

For the Governor:

FRANK H. BLACKLEDGE,  
Secretary.

A joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale, or keeping for sale, in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors, except for scientific, medical, mechanical and wines for sacramental purposes, and providing for regulating sales for said purposes.

Enrolled Joint Resolution No. 7—House of Representatives.

*Resolved, By the General Assembly of the State of Indiana, That* the following amendment be, and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz.: Amend by adding thereto Article 17, so as to read as follows:

Section 1. The manufacture, sale, or keeping for sale, in said State, spirituous, vinous, malt liquors, or any other intoxicating liquors, except for medical, scientific, mechanical, and wines for sacramental purposes, shall be and is hereby forever prohibited in the State of Indiana.

Sec. 2. The General Assembly of the State of Indiana, shall provide by law in what manner, by whom, and at what places, such liquors shall be manufactured or sold for medical, scientific, mechanical and sacramental purposes.

WILLIAM M. RIDPATH,  
Speaker of the House of Representatives.

THOMAS HANNA,  
President of the Senate.

Originated in the House of Representatives.

CYRUS T. NIXON,  
Principal Clerk.

Filed April 11, 1881.

E. R. HAWN,  
Secretary of State.

## CERTIFICATE.

State of Indiana, }  
Office of the Secretary of State. } ss:

I, E. R. Hawn, Secretary of State of the State of Indiana, do hereby certify that the annexed is a true, correct and complete copy of an enrolled Joint Resolution, No. 7, of the House of Representatives of the State of Indiana, passed and adopted by the last General Assembly of said State, at the special session thereof, entitled "A joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale, or keeping for sale in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors, except for scientific, medicinal, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes," as the same was filed in my office April 11, 1881, and now remains upon said file.

In witness whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 16th day of January, A. D. 1883.

(SEAL)

E. R. HAWN,  
Secretary of State.

Enrolled Joint Resolution No. 6—Senate.

Received April 14, 1881.

For the Governor:

State of Indiana,  
Executive Department.

FRANK H. BLACKLEDGE,  
Secretary.

Senate joint resolution, proposing an amendment to Section 1, Article 6, of the Constitution:

Enrolled Joint Resolution No. 6—Senate—*Resolved by the Senate, the House of Representatives concurring*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 1 of the sixth article to read: Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than one term, or four years in a period of eight years.

*Resolved*, That in submitting this amendment to the electors

of the State to be voted on it shall be designated as Amendment No. 2.

WILLIAM M. RIDPATH,  
Speaker of the House of Representatives.

THOMAS HANNA,  
President of the Senate.  
Originated in the Senate.

WM. H. SCHLATER,  
Principal Secretary of the Senate.

Filed April 20, 1881.

E. R. HAWN,  
Secretary of State.

# CERTIFICATE.

State of Indiana, } ss:  
Office of the Secretary of State.

I, E. R. Hawn, Secretary of State of the State of Indiana, do hereby certify that the annexed is a true, correct and complete copy of enrolled Joint Resolution No. 6, of the Senate of Indiana, passed and adopted by the last General Assembly of said State, at the special session thereof, entitled "Senate Joint Resolution proposing an amendment to Section 1 Article 6, of the Constitution," as the same appears on file in my office under date of April 20, 1881.

In witness whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this sixteenth day of January, A.D. 1883.

(SEAL)

E. R. HAWN,  
Secretary of State.

Enrolled joint resolution No. 7—Senate of Indiana.

State of Indiana,  
Executive Department.

Received April 14, 1881.

For the Governor:

FRANK H. BLACKLEDGE,  
Secretary.

Senate joint resolution proposing an amendment to Section 2 of Article 6 of the Constitution:

Enrolled Joint Resolution No. 7, State of Indiana—*Resolved by the Senate, the House of Representatives concurring, That the*



following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of the sixth article, to read:

Sec. 2. There shall be elected in each county by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, and no person shall be eligible to either of said offices more than four years, or one term, in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3.

WILLIAM M. RIDPATH,  
Speaker of the House of Representatives.

THOMAS HANNA,  
President of the Senate.  
Originated in the Senate.

WM. H. SCHLATER,  
Principal Secretary of the Senate.

Filed April 14, 1881.

E. R. HAWN,  
Secretary of State.

#### CERTIFICATE.

State of Indiana, }  
Office of the Secretary of State. } ss.

I, E. R. Hawn, Secretary of State of the State of Indiana, do hereby certify that the annexed is a true, correct and complete copy of enrolled Joint Resolution No. 7, of the Senate of Indiana, passed and adopted by the last General Assembly of said State, at the special session thereof, entitled "Senate Joint Resolution proposing an amendment to Section 2 of Article 6 of the constitution," as the same now appears on file in my office under date of April 14, 1881.

In witness whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 16th day of January, A.D. 1883.

(SEAL)

E. R. HAWN,  
Secretary of State.

Enrolled Joint Resolution No. 8.—House of Representatives.

State of Indiana,  
Executive Department.

Received April 9, 1881.

For the Governor:

FRANK H. BLACKLEDGE,  
Secretary.

A joint resolution proposing an amendment to Section 2, Article 2 of the Constitution of the State of Indiana.

Enrolled Joint Resolution No. 8 —House of Representatives—  
*Be it Resolved by the General Assembly of the State of Indiana,*  
That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit:

Amend Section 2 of Article 2 thereof, so that it will read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United State of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every person of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his or her intention to become a citizen of the United States, conformably to the laws of the United States on that subject, shall be entitled to vote in the township, ward or precinct where he or she may reside, if he or she shall have been duly registered according to law.

*Resolved,* That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 4.

WILLIAM M. RIDPATH,  
Speaker of the House of Representatives.

THOMAS HANNA,  
President of the Senate.

Originated in the House of Representatives.

CYRUS T. NIXON,  
Principal Clerk.

Filed April 11, 1881.

E. R. HAWN,  
Secretary of State.

## CERTIFICATE.

State of Indiana,  
Office of the Secretary of State. } ss.

I, E. R. Hawn, Secretary of State of the State of Indiana, do hereby certify that the annexed is a true, correct and complete copy of enrolled Joint Resolution No. 8, of the House of Representatives, passed and adopted by the last General Assembly of the State of Indiana, at the Special Session thereof entitled, "A Joint Resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana," as the same was filed in my office, on the 11th day of April, 1881, and now remains on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this 16th day of January, A.D., 1883.

E. R. HAWN,  
Secretary of State.

(SEAL)

We further find that said joint resolutions were included in and published in the printed volume of the laws of the State of Indiana, passed at the last session of the General Assembly by authority and may be found therein.

We do not find that said resolutions were spread at length upon the Journals of the General Assembly, nor that they were in words referred to this General Assembly.

We do find that they are in the same condition as resolutions heretofore adopted and agreed to as amendments to the Constitution of Indiana which were agreed to by a succeeding General Assembly, and ratified by a majority of the electors of the State of Indiana, and declared by the Governor of the State to have been duly adopted as a part of the Constitution of Indiana.

We, therefore, find and report to the Senate that the provisions of Section 1, Article 16, of the Constitution of Indiana have been substantially complied with, and that said several joint resolutions above set forth are duly and legally before this General Assembly for its action thereon.

EUGENE BUNDY,  
ROBERT GRAHAM.

The reports of the House committee were under consideration by the committee of the whole on January 25, 26, 29, 30, 31 and February 6. The second minority report, signed by Messrs. Jewett and Patten, was adopted on February 6, by a vote of 52-35, ten members pairing. The Senate committee of the whole had the reports of the Senate Judiciary Committee un-

der consideration on January 24, 25, 26 and 29. On the latter date, the majority report of the Senate committee was adopted by a vote of 25-23, two senators pairing.

**362. Prohibiting the Manufacture and Sale of Intoxicating Liquors  
(February 19, 1883).**

The State-wide prohibition amendment was introduced in the House on February 19 by Mr. James N. Huston, a Republican, and advanced to second reading by a vote of 56-19. On February 20, the resolution was advanced to engrossment. On February 24, the resolution passed by a vote of 57-37, and was reported to the Senate. No action was taken in the Senate until March 2, when, by a vote of 22-15, on motion of Senator William Dudley Foulke, the resolution was ordered taken up for consideration. Nothing was done, however, until March 3 when Mr. Eugene H. Bundy moved to take up the resolution and place it on its passage. The motion was lost by a vote of 18-22, and no further action was taken.

*[House Journal, Fifty-third Session, 689.]*

House joint resolution No. 1.

A joint resolution agreeing to and adopting an amendment proposed to the Constitution by the last General Assembly, by inserting Article 17 forever prohibiting the manufacture, sale, or keeping for sale in the State of Indiana, spirituous, vinous, malt, or any other intoxicating liquors, except for scientific, medicinal, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes.

WHEREAS, The last General Assembly, at the special session thereof, passed, adopted, and agreed to the following joint resolution, to-wit:

A joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forever prohibiting the manufacture, sale, or keeping for sale in the State of Indiana, spirituous, vinous, malt, or other intoxicating liquors, except for scientific, medicinal, mechanical, and wines for sacramental purposes, and providing for regulating sales for said purposes.

*Resolved by the General Assembly of the State of Indiana, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz.: Amend by adding thereto Article 17, to read as follows:*

Section 1. The manufacture, sale, or keeping for sale, in said State, spirituous, vinous, malt liquors, or any other intoxicating liquors, except for medicinal, scientific, mechanical and wines for

sacramental purposes, shall be, and is hereby, forever prohibited in the State of Indiana.

Sec. 2. The General Assembly of the State of Indiana shall provide, by law, in what manner, by whom, and at what places, such liquors shall be manufactured or sold for medicinal, scientific, mechanical and sacramental purposes.

*Be it Resolved by the General Assembly of the State of Indiana,* That the said amendment proposed to the Constitution of Indiana contained in said joint resolution, passed by the Special Session of the 52d General Assembly, as aforesaid, and hereinbefore recited, be, and the same hereby is, agreed to and adopted by this General Assembly, and that in said submission of this amendment to the electors of the State, to be voted upon by them, it shall be designated as Amendment No. 1.

### 363. Woman Suffrage (February 20, 1883).

The woman suffrage amendment was introduced in the House on February 20 by Mr. Christian Holler, a Republican. The House refused to suspend the constitutional rule in order to advance the resolution to engrossment. By a vote of 53-33, the resolution was made a special order for February 24, on which day the resolution was adopted by a vote of 53-42. The Senate never took any action on the measure.

[*House Journal, Fifty-third Session, 702.*]

A joint resolution agreeing to an amendment proposed to the Constitution of the State of Indiana by the Fifty-Second General Assembly of the State of Indiana, amending Section 2 of Article 2 thereof.

WHEREAS, The last General Assembly of the State of Indiana, at the special session thereof, by House joint resolution No. 8, proposed and referred to the action of the present General Assembly the following amendment to the Constitution of the State of Indiana, as hereinafter inserted, to-wit: A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana; be it

*Resolved,* By the General Assembly of the State of Indiana, that the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of Article 2 thereof so that it will read as follows, to-wit: Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State



during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election; and every person of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his or her intention to become a citizen of the United States, conformable to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township, ward or precinct where he or she may reside, if he or she shall have been duly registered according to law.

*Resolved*, That in submitting this proposition to the electors to be voted upon, it shall be designated as Amendment No. 4; therefore, be it

*Resolved by the General Assembly of the State of Indiana*, That the said amendment, as hereinbefore set forth and proposed to the Constitution of the State of Indiana at the special session of the Fifty-second General Assembly of the State of Indiana, and referred to the action of the present General Assembly, as hereinbefore recited, be and the same is hereby agreed to by this General Assembly.

#### 364. Woman Suffrage (February 1, 1883).

On February 1, Mr. William Dudley Foulke, a Republican, introduced a joint resolution in the Senate proposing an amendment to Section 2 of Article 2, of the Constitution of the State of Indiana relating to the qualifications of electors, and abolishing all disqualification on account of sex, and moved its reference to the Joint Committee on Claims of Women. The point of order was raised that while proposed amendments are pending no other propositions to amend the Constitution are in order. Pending discussion of the point, Senator Foulke was given unanimous consent to withdraw the resolution.

#### 365. Pending Amendments (February 1, 1883).

The following resolution introduced on February 1, and which was declared out of order, reflects some light on the question whether the amendments proposed in 1881 were actually pending.

[*Senate Journal, Fifty-third Session, 385.*]

*Resolved*, That a committee of five Senators, all of whom shall be Democrats, be appointed by the President to notify the Indianapolis *Sentinel* of the action of the Senate on the status of

the supposed-to-be pending amendments to the Constitution of the State, and, further, to notify said newspaper that in the opinion of the Senate, congratulations to the Democratic party of Indiana are in order, and that some editorial notice or comment would not only be proper, but highly necessary to the Democratic majority of this State.

### 366. Terms of State Officers (February 20, 1883).

The pending amendment fixing the term of State officers at four years was introduced in the House on February 20, by Mr. Harvey B. Shively, a Republican. By a vote of 38-58, the House refused to suspend the constitutional rule in order to advance the resolution to engrossment. On February 23, by a vote of 53-27, the resolution was made a special order for February 24, on which day the resolution was passed by a vote of 56-39. The Senate never took any action on this resolution.

*[House Journal, Fifty-third Session, 704.]*

A joint resolution, agreeing to and adopting an amendment proposed to the Constitution of the State of Indiana, by the last General Assembly, amending Section 1 of Article 6, of the Constitution, requiring the election in the State of Indiana by the voters at the general election, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for four years, and perform such duties as may be enjoined by law, and providing that no person shall be eligible to either of said offices more than one term, or four years, in any period of eight years.

WHEREAS, The Fifty-second General Assembly of the State of Indiana, by Senate joint resolution No. 6, did propose an amendment to the Constitution of the State of Indiana, and referred the same to the action of the present General Assembly, which resolution and proposed amendment reads as follows, to-wit: "A joint resolution proposing an amendment to Section 1, Article 6, of the constitution."

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed to-wit: Amend Section 1, of Article 6, to read:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law, and no person shall be eligible

to either of said offices more than one term, or four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No.2.

*Therefore, be it Resolved by the General Assembly of the State of Indiana*, That the above and foregoing proposed amendment to the Constitution of the State of Indiana be and the same is hereby agreed to.

### 367. Terms of County Officers (February 20, 1883).

The proposed amendment fixing the terms of county officers at four years was introduced in the House on February 20, by Mr. Doak R. Best, a Republican. By a vote of 38-58, the House refused to suspend the rules in order to advance the resolution to engrossment. The resolution passed the House on February 24 by a vote of 53-41, but was not considered by the Senate.

[*House Journal, Fifty-third Session, 706.*]

A joint resolution agreeing to and adopting an amendment to the Constitution of the State of Indiana, proposed by the last General Assembly of the State of Indiana, to Section 2 of Article 6 of the Constitution, requiring the election in each county of the State, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for four years, and providing that no person shall be eligible to either of said offices more than four years in any period of eight years.

WHEREAS, The Fifty-second General Assembly of the State of Indiana, by Senate Joint Resolution No.7 did propose an amendment to the Constitution of the State of Indiana, and did refer the same to the action of the present General Assembly, which said resolution and proposed amendment read as follows, to-wit:

A joint resolution proposing an amendment to Section 2 of Article 6 of the Constitution:

*Resolved by the Senate, the House of Representatives concurring*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices four years, and no

person shall be eligible to either of said offices more than four years, or one term, in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State, to be voted on, it shall be designated as Amendment No. 3; therefore, be it

*Resolved by the General Assembly of the State of Indiana*, That the above and foregoing proposed amendment to the Constitution of the State of Indiana be, and the same is hereby agreed to.

### 368. Submission of the Amendments (February 24, 1883).

On February 24, as soon as the foregoing amendments had been adopted, Mr. Charles L. Jewett, a Democrat, introduced a resolution in the House instructing the Judiciary Committee to prepare and report a bill providing for the submission of the proposed amendments to the people. By a vote of 61-30, the resolution was laid on the table.

[*House Journal, Fifty-third Session, 839*].

House Resolution No. 62.

*Resolved*, That the judiciary committee of this House be, and it is hereby instructed to prepare and report to this House, on next Monday, a bill for an act providing for the submission of the proposed amendments to the Constitution to a direct vote of the electors of this State, at the next general election for State officers in this State.

### 369. Submission of Amendments Generally (January 22, 1883).

Mr. James H. Willard, a Democrat, introduced a bill in the Senate on January 22, providing for the submission of any constitutional amendments which might at any time be pending consideration by the people. The author moved that the bill be referred to "a special committee of five, three Democrats and two Republicans." On January 25, the special committee submitted a divided report. The majority report recommended passage, the minority report recommended indefinite postponement. The majority report was concurred in but no further action was taken.

[*Senate Journal, Fifty-third Session, 250*].

Senate bill No. 156. A bill for an act providing for the submission to the electors of the State of Indiana, for ratification or rejection of any constitutional amendment or amendments which may at any time be proposed and agreed to by two General Assemblies, in succession, in accordance with the provisions of Article 16 of the Constitution of the State of Indiana, prescribing certain duties of officers of election; and others providing penalties for the violation thereof, repealing all laws in conflict therewith, and declaring an emergency.

**370. Method of Adopting Constitutional Amendments (January 30, 1883).**

On January 30, Senator Francis Johnson, a Democrat, introduced a resolution in the Senate proposing an amendment to the constitution providing that amendments which are proposed to the Constitution must receive the affirmative vote of two-thirds of the members of each House to insure their adoption. The point was raised that no new amendments to the Constitution could be proposed while amendments were pending and the author was granted leave to withdraw the proposed amendment.

*[Senate Journal, Fifty-third Session, 341.]*

A joint resolution proposing an amendment to Section 1, Article 16 of the Constitution of the State of Indiana.

*Resolved by the General Assembly of the State of Indiana, That Section 1 of Article 16 of the Constitution of the State of Indiana shall be so amended as to read:*

Section 1. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed upon by two-thirds of all the members elected to each of the two Houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered and spread at full length on their Journals and referred to the General Assembly to be chosen at the next general election; and if in the General Assembly, so next chosen, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election, and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

**371. Calling a Constitutional Convention (February 7, 1883).**

The only bill to provide for the call of a constitutional convention was introduced in the Senate on February 7, by Mr. Jesse J. Spann, a Republican. The bill was referred to the Judiciary Committee and apparently was never reported back.

*[Senate Journal, Fifty-third Session, 441.]*

Senate bill No. 248, entitled:

A bill to provide for the calling of a convention of the people of the State of Indiana, to revise, amend or alter the Constitution of said State, or to make a new Constitution for said State, and to provide for submitting said new Constitution to a vote of the qualified voters of the State of Indiana.



**372. Republican Platform of 1884—Endorses Calling a Constitutional Convention (June 19, 1884).**

The Republican State Convention of 1884 was held in the city of Indianapolis on June 19. The amendments pending in 1881 and 1882 had been defeated by the General Assembly of 1883 and no additional amendments were adopted. The sentiment for a constitutional convention had been growing rapidly, and the Republicans declared unequivocally in favor of summoning a convention at an early date.

*[Indianapolis Journal, June 20, 1884.]*

In the lapse of thirty-three years, by the increase of our population, and by the marvelous development of our material resources and the spread of intelligence, our State has outgrown the Constitution of 1851, and we therefore favor the calling of a convention at an early day, for the purpose of framing a new State Constitution, adapted to the present circumstances of a great and growing Commonwealth.

**373. Democratic Platform of 1884—Opposes Calling a Constitutional Convention (June 25, 1884).**

The Democratic State Convention of 1884 was held in the city of Indianapolis on June 25, only a few days after the Republican Convention. The fight against the liquor traffic was still being waged with vigilance. The Democrats incorporated the following planks in their platform relative to a constitutional convention.

*[Indianapolis Sentinel, June 26, 1884.]*

*Resolved*, That we are opposed to calling a convention to alter and amend the constitution of this State. Such a convention would be a great and useless expense, and would result in unsettling laws and systems now well established and understood, and which could not be as well understood under a new constitution for a quarter of a century. It will be wise in this matter to let well enough alone. The country has prospered and grown great under the present Constitution and it needs no tinkering with at the present time, especially in the interest of any party seeking to invade the rights of private property and personal liberty now secured by the Constitution. And any amendments that may become necessary in the future should be made in the cheap, simple and just manner provided in the Constitution itself.

It is provided by the Constitution of this State that the liberty of the people should be protected and that their private property should not be taken without just compensation, and we are op-

posed to any change in the constitution tending to weaken these safeguards, or to any legislation which asserts the power to take or destroy the private property of any portion of the people of this State without compensation, or which unjustly interferes with their personal liberty as to what they shall eat or drink, or as to the kind of clothing they shall wear, believing that the government should be administered in that way best calculated to confer the greatest good upon the greatest number, without sacrificing the rights of the person or of property, and leaving the innocent creeds, habits, customs and business of the people unfettered by sumptuary laws, class legislation, or extortionate monopolies. While standing faithfully by the rights of property and personal liberty guaranteed to the people by the Constitution, we distinctly declare that we are in favor of sobriety and temperance, and all proper means for the promotion of these virtues, but we believe that a well regulated license system, and reasonable and just laws upon the subject, faithfully enforced, would be better than extreme measures which being subversive of personal liberty and in conflict with public sentiment, would never be effectively executed, thus bringing law into disrepute and tending to make sneaks and hypocrites of our people; Therefore we are opposed to any Constitutional amendment relating to the subject of the manufacture and sale of intoxicating and malt liquors.

#### THE FIFTY-FOURTH GENERAL ASSEMBLY OF 1885 AND THE SPECIAL SESSION OF 1885.

The 54th General Assembly was largely Democratic in both Houses. There were 36 Democrats and 14 Republicans in the Senate, and 63 Democrats and 36 Republicans in the House. There were no amendments pending consideration. The attempt to secure a state-wide prohibition amendment seems to have been generally abandoned, but the people were determined to provide for a campaign of education on the harmful effects of intoxicating liquors or narcotics on the human system, and hundreds of petitions were presented in the House and Senate asking the General Assembly to pass a law requiring the teaching of scientific temperance in the public schools. A rather large number of amendments were proposed including proposals designed to fix the terms of State and county officers at four years, increasing the membership of the Supreme Court, providing for the redistricting of the State for judicial purposes, dividing the Supreme Court into divisions or benches for the consideration of cases, admitting negroes to the militia, extending the right of suffrage to women, state-wide and local prohibition, fixing regular sessions at 100 days and special sessions at 50 days, authorizing the Governor to veto items in appropriation bills, prohibiting the hiring of convicts and delinquents, eliminating the section relative to the qualifications of lawyers, and deleting

the provision relative to code commissioners. Only two amendments were adopted. One of these fixed the terms of county officers at four years and the other provided for the admission of negroes to the militia.

### 374. Terms of County Officers (March 7, 1885).

The resolution proposing an amendment to the Constitution fixing the terms of county officers at four years and rendering persons ineligible for more than one term in any period of eight years, was introduced in the House on January 14 by Mr. Martin T. Krueger, a Democrat. The resolution was referred to the Committee on Ways and Means. On January 21, the committee returned a favorable report in which the House concurred. On January 29 the resolution passed the House by a vote of 81-8, and both the resolution and the ayes and noes were again set out in full on the Journals. The resolution passed the Senate with amendments on February 23 by a vote of 32-2, and the resolution with the ayes and noes was entered in full. The amended resolution was reported favorably by the House Judiciary Committee on March 6 and was agreed to by a vote of 80-5. The resolution was approved on March 7, 1885.

[*House Journal, Fifty-fourth Session, 932.*]

A joint resolution proposing an amendment to Section 2 of Article 6 of the Constitution:

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for a term of four years from the first day of January after their election, and no person shall be eligible to either of said offices, except that of surveyor, more than four years, or one term in any period of eight years: *Provided*, That in case of the appointment of any one of such offices to fill any vacancy therein, such appointee shall be appointed to hold only to the first of January succeeding the next general election after such vacancy occurs.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

### 375. Admitting Negroes to the State Militia (April 13, 1885).

A proposed amendment admitting negroes to the State militia was embodied in a resolution introduced in the House on January 27, by Mr. Doak

R. Best a Republican. The resolution passed the House on March 20 by a vote of 77-2, and the Senate on April 13 by a vote of 44-0. The resolution was not signed by the Governor but was filed in the office of the Secretary of State on April 13, 1885.

[*House Journal, Fifty-fourth Session, 311.*]

House Joint Resolution No. 6.

A joint resolution proposing an amendment to Section 1 of Article 12 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed, and agreed to, to-wit: Amend Section 1 of Article 12, by striking out the word "white" contained in said section.

*Resolved, further,* That in voting on this amendment it shall be designated and known as Amendment No. 3.

### 376. Composition of State Militia (January 27, 1885).

A similar amendment admitting negroes to the State militia, was proposed in the House on January 27 by Mr. R. C. J. Pendleton, a Democrat. The resolution was referred to the Committee on Military Affairs and was not subsequently considered.

[*House Journal, Fifty-fourth Session, 308.*]

House Joint Resolution No. 5.

*Resolved, by the House of Representatives, the Senate concurring,* That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to-wit: Amend Section 1 of Article 12, to read as follows:

Section 1. The militia shall consist of all able bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or this State, and shall be organized, officered, armed and equipped, and trained in such manner as may be provided by law.

A similar amendment was proposed in the Senate by Mr. William Dudley Foulke on April 13, but not subsequently considered.

[*Senate Journal, Fifty-fourth Session, 973.*]

A joint resolution proposing an amendment to Section 1 of Article 12 of the Constitution of the State:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the constitution of the State

of Indiana be and the same is hereby proposed, to wit: Amend Section 1 of Article 12 by striking out the word "white" contained in said section.

*Resolved, further,* That in voting on this amendment it shall be designated and known as Amendment No. 3.

### 377. Term of State Officers (January 27, 1885).

A resolution embodying an amendment proposing to fix the term of State officers at four years was introduced in the House on January 27 by Mr. Martin T. Kreuger. The Committee on Ways and Means on January 31 made a favorable report. The resolution passed the House on March 31 by a vote of 76-6 and the resolution, together with the ayes and noes, were re-entered on the Journal. The Senate took no definite action on this resolution.

[*House Journal, Fifty-fourth Session, 1883.*]

No. 4. A joint resolution proposing an amendment to Section 1, Article 6, of the Constitution.

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to-wit:

Amend Section 1 of Article 6, to read:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than one term, or four years, in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

### 378. Woman Suffrage (January 27, 1885).

On January 27 a resolution was adopted by the House providing "that a committee of five members of this House be appointed by the Speaker, which shall be known as the 'Committee on Women's Claims,' to which shall be referred all matters pertaining to any proposed extension of the rights and privileges of women." The committee was appointed at once. On February 19, a resolution was adopted by the House tendering the use of the House chamber to the Woman's State Suffrage Association of Indiana "for the purpose of addressing the members of the General Assembly on the suffrage question." On January 27, Mr. Doak R. Best introduced a resolution in the House proposing an amendment to the Constitution to confer the right of suffrage on women. On April 2, the House refused to agree to the resolution by a vote of 43-45.



[*House Journal, Fifty-fourth Session, 311.*]

House Joint Resolution No. 7.

A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to-wit: Amend Section 2 of Article 2 thereof, as follows:

Strike from said Section 2, the word "male", wherever such word occurs therein.

*Resolved, further,* That in voting on this amendment it shall be designated and be known as Amendment No. 4.

### 379. Woman Suffrage (February 19, 1885).

A woman suffrage amendment was also introduced in the Senate on February 19 by Mr. William Dudley Foulke, a Republican, but was rejected by a vote of 22-25.

[*Senate Journal, Fifty-fourth Session, 361.*]

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment is proposed and agreed to Article 2, Section 2 of the Constitution of the State of Indiana.

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, without distinction of sex, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election; and every male<sup>2</sup> of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

### 380. Traffic in Intoxicating Liquors (February 7, 1885).

An amendment designed to prohibit the traffic in intoxicating liquors was proposed in the House on February 7 by Mr. E. H. Staley, a Democrat, but was indefinitely postponed.

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2. Either by design or inadvertence, foreign born women, by this provision, would have been deprived of suffrage.

[*House Journal, Fifty-fourth Session, 501.*]

A joint resolution proposing an amendment to Section 119 (being Section 23 of Article 4) of the Constitution.

*Resolved by the General Assembly of the State of Indiana, That* Section 119 (being Section 23 of Article 4) of the Constitution of Indiana be amended to read as follows:

Laws must be general—23. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State: *Provided*, That the legislature may regulate or prohibit the traffic in intoxicating liquors for beverage purposes by laws that shall be general, or by laws that shall be applicable in specified portions of the State only.

### 381. Duration of Legislative Sessions (February 19, 1885).

Mr. Samuel W. Williams, a Democrat, introduced a resolution in the House on February 19 fixing the duration of a regular session of the General Assembly at 100 days and special sessions at 50 days. On March 3, the resolution was adopted by the House by a vote of 68-11. The resolution came up for consideration in the Senate on March 7 and several amendments relative to the compensation of members of the General Assembly were proposed. A motion to fix the compensation of members at \$500 per annum, payable quarterly, was rejected by a vote of 19-23; a motion to fix the compensation of members at \$300 per annum, payable quarterly, was lost by a vote of 20-23; other amounts suggested were \$400 and \$450. The whole proposition was postponed indefinitely by a vote of 28-15.

[*House Journal, Fifty-fourth Session, 797.*]

House Joint Resolution No. 13.

*Be it resolved by the General Assembly of the State of Indiana, That* the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to-wit: Amend Section 29 of Article 4, so that it shall be read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of one hundred days, nor any special session beyond the term of fifty days.

### 382. Membership of Supreme Court (March 17, 1885).

On March 17, Mr. Charles Kellison introduced a resolution in the House proposing to increase the membership of the Supreme Court to a maximum of nine judges.

[*House Journal, Fifty-fourth Session, 1211.*]

A joint resolution proposing amendments to Section 2, Article 7, of the Constitution of the State of Indiana.

*Resolved by the General Assembly of the State of Indiana, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana: Amend Section 2, Article 7, so that it will read as follows:*

Sec. 2. The Supreme Court shall consist of not less than three nor more than nine Judges, a majority of whom shall form a quorum. They shall hold their office for six years if they so long behave well.

*Resolved, That in submitting this proposed amendment to the electors to be voted on it shall be designated as amendment No. —.*

On March 20, the foregoing resolution was withdrawn and the following resolution introduced in lieu thereof. On April 2, the resolution passed by a vote of 68-10, and was reported to the Senate but not acted upon.

[*House Journal, Fifty-fourth Session, 1256.*]

A joint resolution proposing amendments to Sections 2 and 3 of Article 7 of the Constitution of the State of Indiana:

*Be it resolved by the House of Representatives, the Senate concurring, That the following amendment is hereby proposed to the Constitution of Indiana: Amend Section 2, Article 7, to read as follows:*

The Supreme Court shall consist of not less than six nor more than nine Judges. They shall hold their offices for the term of six years, if they so long behave well. Amend Section 3, Article 7, to read as follows:

The State shall be divided into three districts, and such districts shall be formed of contiguous territory as nearly equal in population as, without dividing a county, the same can be made. Not less than two, or more than three Judges shall be elected from each district, and reside therein; but said Judges shall be elected by the electors of the State at large.

The Judges of the Supreme Court shall be divided into not less than two nor more than three benches, and three Judges shall constitute a bench, and a majority of the Judges in any bench shall constitute a quorum. Each bench of Judges shall have exclusive jurisdiction of such class or classes of appeals, and such original jurisdictions as the General Assembly may prescribe.

Where all the Judges of any bench having jurisdiction of a cause to all, the Judges of the Supreme Court, and in such case a majority of them shall constitute a quorum.<sup>3</sup>

### 383. Membership of Supreme Court (February 13, 1885).

A resolution designed to increase the membership of the Supreme Court was introduced in the Senate on February 13, by Senator Inman H. Fowler, a Democrat, and referred to the Judiciary Committee. On March 31, the committee reported the resolution back in an amended form and recommended its passage. The resolution failed to pass for want of a constitutional majority.

[*Senate Journal, Fifty-fourth Session, 844.*]

A concurrent resolution proposing an amendment to Section 2 of Article 7, of the Constitution of the State of Indiana.

*Resolved by the Senate, the House of Representatives concurring,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 7, to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than seven Judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well.

But the General Assembly may by law divide the Judges into classes in such manner that a number as nearly equal as possible shall be elected biennially, and Judges elected to fill vacancies shall only hold for the unexpired term of the Judge whose vacancy is so filled.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3.

### 384. Veto of Items in Appropriation Bills (February 2, 1885).

On February 2, Senator Joshua Ernest, a Democrat, introduced a resolution proposing an amendment to the Constitution authorizing the Governor to veto items in appropriation bills. The resolution was referred to the Judiciary Committee and there was no further action.

[*Senate Journal, Fifty-fourth Session, 186.*]

Joint Resolution No. 6:

*Resolved by the Senate, the House of Representatives concurring,*

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3. This somewhat ambiguous sentence is an exact copy of the entry in the House Journal.

That the following amendment to the Constitution of the State of Indiana be, and the same is hereby, proposed, to-wit: Amend Section 14 of Article 5 to read:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly: *Provided, however,* That the Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed by both houses, as provided herein for the repassage of other bills.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

### 385. Hiring Convicts and Delinquents (February 3, 1885).

Proposed amendments prohibiting the hiring of the labor of convicts of penitentiaries and inmates of reformatories were presented in both houses. The Senate resolution was introduced on February 3 by Mr. Francis Johnson, a Democrat, and was referred to the Committee on Labor, but was not subsequently acted upon.

[*Senate Journal, Fifty-fourth Session, 199.*]

Joint Resolution No. 7 proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forbidding the hiring out of the



labor of the convicts of the penitentiaries and inmates of the reformatory institutions of the State, and providing for regulating the employment of said convicts and inmates.

The House resolution was introduced on March 19 by Mr. Smith of Tippecanoe, a Republican, and not subsequently taken up.

[*House Journal, Fifty-fourth Session, 1261.*]

House Joint Resolution No. 3.

A joint resolution proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17, forbidding the hiring out of the labor of the convicts of the penitentiaries and the inmates of the reformatory institutions of the State, and providing for regulating the employment of said convicts and inmates, having reference to the interests of the State and the reformation of the convicts.

*Resolved by the General Assembly of the State of Indiana, That the following amendment to the Constitution of the State of Indiana be and the same is proposed, to-wit: Amend by adding thereto Article 17, so as to read as follows:*

Section 1. The labor of the convicts of the penitentiaries and of the inmates of the reformatory institutions of the State shall not be hired out to contractors, corporations or private citizens; nor shall any law be enacted under whose provisions said labor shall in any way or degree pass from under the immediate control and supervision of the State and its officers.

Sec. 2. The legislature of the State shall provide by law in what manner and by whom the convicts of the penitentiaries and the inmates of the reformatory institutions shall be employed, having special regard to the interests of the State, and the reformation of the convicts.

### 386. Qualifications to Practice Law (March 14, 1885).

Senator William Dudley Foulke, a Republican, introduced a lawyers qualification amendment on March 14, designed merely to strike out the existing constitutional provision and thus give the General Assembly unlimited authority to prescribe such regulations as might be deemed necessary. The resolution was referred to the Judiciary Committee and not further considered.

[*Senate Journal, Fifty-fourth Session, 626.*]

Concurrent Resolution No. 29;

*Resolved by the Senate, the House of Representatives concurring, That the following amendment is proposed and agreed to, to the Constitution of Indiana, viz: Strike from said Constitution Section 21 of Article 7 thereof.*

**387. Code Commissioners (March 14, 1885).**

On March 14, Senator William Dudley Foulke introduced a resolution to amend the constitution by eliminating the provision providing for the appointment of three commissioners to reduce the statute laws to a systematic code. The resolution was referred to the Judiciary Committee but not subsequently considered.

[*Senate Journal, Fifty-fourth Session, 627.*]

*Resolved by the Senate, the House of Representatives concurring,*  
That the following amendment is proposed and agreed to, to the Constitution of Indiana:

Strike from said Constitution, Section 20 of Article 7 thereof.

**388. Supreme Court Reports (January 19, 1885).**

On January 19, Mr. Charles Kellison introduced a resolution in the House designed to effect an unspecified change in the section of the Constitution relative to the Supreme Court reports. On February 23, the resolution was indefinitely postponed.

[*House Journal, Fifty-fourth Session, 178.*]

Joint Resolution No. 3 proposing amendment to Section 6 of Article 7 of the Constitution.

**389. Constitutional Convention (January 13 and 19, 1885).**

A bill was introduced in each house providing for the call of a constitutional convention. The senate bill was introduced by Mr. William Dudley Foulke on January 13 and referred to the Judiciary Committee. On January 16, the committee presented a divided report. The majority of the committee recommended indefinite postponement; a minority recommended passage. The reports were under discussion on January 22 and 23, and on the latter day the majority report in favor of indefinite postponement was concurred in by a vote of 16-29.\*

[*Senate Journal, Fifty-fourth Session, 32.*]

Senate bill No. 26. A bill for an act to provide for the call of a convention of the people of the State of Indiana, to make a new Constitution for said State, and to provide for submitting said new Constitution to a vote of the qualified voters of said State of Indiana, and declaring an emergency.

The House bill was introduced on January 19, by Mr. John A. Deem, a Republican, and referred to the Committee on Rights and Privileges. On January 22, the committee recommended indefinite postponement and the House concurred in the recommendation. On the following day an attempt was made to reconsider the vote of concurrence, but was lost by a vote of 32-57.

\*((The vote of 16-29 was for rejection of the minority report; no vote is given for the majority report concurrence.))

[*House Journal, Fifty-fourth Session, 172.*]

House bill No. 135. An act to provide for the call of a convention of the people of the State of Indiana to revise, amend, or alter the Constitution of said State, or to make a new Constitution for said State, and to provide for submitting said new Constitution to a vote of the qualified voters of the State of Indiana.

**390. Duration of Legislative Sessions (January 12, 1885).**

In his inaugural address, delivered on January 12, Governor Gray indirectly approved the 60-day period of the legislative sessions.

[*House Journal, Fifty-fourth Session, 62.*]

There is not much danger of erring on the side of too little law. The world is governed too much, and that was undoubtedly the principle that governed the framers of our Constitution in restricting the length of our legislative sessions.

The fact that such provision has been so long sanctioned by the people without an effort to change it, argues well its wisdom as a measure tending to serve the best interest of all the people of the State. Hence it becomes a matter of duty for each member to diligently and earnestly co-operate with his fellow-members in perfecting and advancing the most important measures, and among the most important are those needed for the support of the State and its institutions. The passage of the general and specific appropriation bills should not be left to the uncertainties attending the closing days of the session. To provide for the public wants of the State is the paramount duty of the legislature. To wisely and economically expend the means provided, is one of the most important trusts confided to those clothed with the management of State affairs.

**391. Democratic Platform of 1886—Endorses Pending Amendment (August 11, 1886).**

The Democratic State Convention of 1886 was held in Indianapolis on August 11. The General Assembly at its preceding sessions had adopted two Constitutional amendments fixing the term of all county officers at four years and admitting negroes to the State militia. The Democrats adopted the following resolution endorsing the proposed amendment relative to the terms of county officers.

[*Indianapolis Sentinel, August 12, 1886.*]

*Resolved*, That we approve the joint resolution proposing an

amendment to the Constitution making the term of county officers four years.

**392. Republican Platform of 1886 -Endorsing Pending Amendment (September 2, 1886).**

The Republican State Convention of 1886 was held in Indianapolis on September 2. The following resolution was adopted endorsing both pending amendments.

*[Indianapolis Journal, September 3, 1886.]*

We favor the pending constitutional amendment making the terms of county officers four years, and striking out the word "white" from Section 1, Article 12, of the Constitution, so that colored men may become a part of the regular militia force for the defense of the State.

**THE FIFTY-FIFTH GENERAL ASSEMBLY (1887)**

The General Assembly of 1887 was Democratic on joint ballot by a narrow margin. There were 19 Republicans and 31 Democrats in the Senate and 55 Republicans and 45 Democrats in the House. Very few constitutional measures were considered and none were adopted. The proposed amendments under consideration were designed to fix the terms of county officers at four years, to admit negroes to the militia and to call a constitutional convention. The militia and county officer amendments were adopted by the preceding General Assembly and were awaiting action.

**393. Terms of County Officers (January 17, 1887).**

The amendment fixing the terms of county officers was introduced in the Senate on January 17 by Mr. Inman H. Fowler, a Democrat, and referred to the Judiciary Committee. On February 26 the committee reported favorably and the resolution was adopted by a vote of 29-12, several senators being present and refusing to vote. A dead-lock between the House and Senate over the question of the election of a Lieutenant Governor was begun on February 23 and lasted until the close of the session. As a result, no communications were received and this resolution was not considered by the House.

*[Senate Journal, Fifty-fifth Session, 798.]*

*Resolved by the Senate, the House concurring therein,* That the following resolution, which was heretofore proposed and agreed to by the Fifty-fourth General Assembly of the State of Indiana, being the regular session of 1885, to-wit: A joint resolution proposing an amendment to Section 2 of Article 6, of the Constitution.

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State

of Indiana be, and the same is hereby, proposed and agreed to, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for a term of four years from the 1st day of January after their election, and no person shall be eligible to either of said offices, except that of surveyor, more than four years, or one term in any period of eight years: *Provided*, That in case of the appointment of any one of such officers to fill any vacancy therein, such appointee shall be appointed to hold only to the 1st of January succeeding the next general election after such vacancy occurs.

*Resolved*, That in submitting this amendment to the electors of the State, to be voted on, it shall be designated as Amendment No. 1, be and the same is hereby adopted and agreed to.

The same amendment was introduced in the House by Mr. William M. Van Slyke, a Republican, on January 17, and was referred to the Judiciary Committee, and was never reported back.

[*House Journal, Fifty-fifth Session, 133.*]

Joint resolution No. 1 proposing an amendment to Section 2 Article 6, of the Constitution, approved March 7, 1885.

*Resolved*, *By the House of Representatives, the Senate concurring*, That the following amendment to the Constitution of the State of Indiana, be, and the same is hereby, proposed and agreed to, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and a surveyor, who shall severally hold their offices for a term of four years from the first day of January after their election, and no person shall be eligible to either of said offices, except that of surveyor, more than four years, or one term in any period of eight years: *Provided*, That in case of the appointment of any one of such officers to fill any vacancy therein such appointee to hold only to the first of January succeeding the next general election after such vacancy accrue.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

*Resolved*, That the joint resolution providing an amendment



to Section 2, Article 6, of the constitution, shall be submitted to the electors at the spring election of eighteen hundred and eighty-eight.

The same amendment was introduced in the House on March 1, by Mr. William R. Gardiner, a Republican, and was adopted at once by a vote of 91-0, but because of the dead-lock was never sent to the Senate.

[*House Journal, Fifty-fifth Session, 733.*]

Joint resolution No. 5 proposing an amendment to Section 2 of Article 6 of the Constitution of the State of Indiana.

WHEREAS, The following amendment to Section 2 of Article 6 of the Constitution of the State of Indiana, was proposed to the General Assembly of the State of Indiana, at its fifty-fourth session, held in the year 1885, and the said proposed amendment was agreed to by a majority of the members elected to each of the two Houses, and said proposed amendment was, with the yeas and nays thereon, entered on the Journal of both Houses of said General Assembly, and is now pending the action of the present session of the General Assembly; therefore,

*Be it Resolved, by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby agreed to, to-wit:

Amend Section 2 of Article 6 to read: Section 2. There shall be elected, in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for a term of four years, from the first day of January after their election, and no person shall be eligible to either of said offices, except that of surveyor, more than four years, or one term, in any period of eight years: *Provided*, That in case of the appointment of any one of such offices to fill any vacancy therein, such appointee shall be appointed to hold only to the first of January succeeding the next general election after such vacancy occurs.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 1.

#### 394. Admitting Negroes to Militia (February 26, 1887).

The militia amendment was presented in the Senate on February 26 by Mr. E. B. Sellers, the chairman of the Judiciary Committee. The amendment was agreed to at once by a vote of 29-13, but the House refused to receive it.

[*Senate Journal, Fifty-fifth Session, 799.*]

*Resolved by the Senate and House of Representatives of the State of Indiana*, That the following resolution, which was heretofore proposed and agreed to by the Fifty-fourth General Assembly of the State of Indiana, being the special session of 1885, to-wit: A joint resolution proposing an amendment to Section 1 of Article 12 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit: Amend Section 1 of Article 12 by striking out the word "white", contained in said section.

*Resolved, further*, That in voting on this amendment it shall be designated and known as Amendment No. 3, be and the same is hereby adopted and agreed to.

### **395. Membership of Supreme Court (January 17, 1887).**

A proposed amendment, fixing the number of members of the Supreme Court at not less than six nor more than nine, was introduced in the House on January 17, was referred to the Judiciary Committee and not subsequently considered.

[*House Journal, Fifty-fifth Session, 147.*]

Joint resolution No. 2, entitled: A joint resolution proposing amendment to Sections 2 and 3 of Article 7 of the Constitution of the State of Indiana.

### **396. Suffrage and Elections (January 21, 1887).**

On January 21, Mr. Joseph A. Little, a Republican, introduced a resolution in the House to amend the section of the Constitution relative to suffrage and elections. The character of the amendment does not appear. The resolution was referred to the Committee on Rights and Privileges and never reported back.

[*House Journal, Fifty-fifth Session, 204.*]

House joint resolution No. 3, entitled: A joint resolution proposing an amendment to Section 2 of Article 2 of the Constitution of Indiana.

### **397. Constitutional Convention (February 21, 1887).**

On February 21, Mr. William M. Van Slyke introduced a bill in the House providing for the call of a constitutional convention. The bill was referred to the Judiciary Committee and was never reported back.

[*House Journal, Fifty-fifth Session, 634.*]

House bill No. 457, entitled: A bill for an act to provide for a call of a convention of the people of Indiana, to make a new Constitution for said State, and to provide for submitting said new Constitution to a vote of the qualified voters of the State of Indiana, and declaring an emergency.

**398. Democratic Platform of 1888—Sumptuary and Private Property Regulations (April 26, 1888).**

The Democratic State Convention of 1888 was held in the city of Indianapolis on April 26. The following resolution relative to the interference with private rights and sumptuary regulations was adopted.

[*Indianapolis Sentinel, April 27, 1888.*]

It is provided by the Constitution of this State that the liberty of the people should be protected and that their private property should not be taken without just compensation, and we are opposed to any change in the constitution tending to weaken these safeguards, or to any legislation which asserts the power to take or destroy the private property of any portion of the people of this State without compensation, or which unjustly interferes with their personal liberty as to what they shall eat or drink or as to the kind of clothing they shall wear, believing that the government should be administered in that way best calculated to confer the greatest good upon the greatest number, without sacrificing the rights of person or property, and leaving the innocent creeds, habits, customs and business of the people unfettered by sumptuary laws, class legislation or extortionate monopolies. While standing faithfully by the rights of property and personal liberty guaranteed to the people by the Constitution, we distinctly declare that we are in favor of sobriety and temperance, and all proper means for the promotion of these virtues, but we believe that a well regulated license system, and reasonable and just laws upon that subject, faithfully enforced, would be better than extreme measures which, being subversive of personal liberty and in conflict with public sentiment, would never be effectively executed, thus bringing law into disrepute and tending to make sneaks and hypocrites of our people.

**399. Republican Platform of 1888—Terms of County Officers and Admission of Negroes to Militia (August 8, 1888).**

The Republican State Convention of 1888, which assembled in the city of Indianapolis on August 8, endorsed the proposal of amending the Con-

stitution to fix the terms of county officers at four years and admitting negroes to the State militia.

[*Indianapolis Journal*, August 9, 1888.]

The amendments to the State Constitution making the terms of county officers four years, and striking out the word "white" from Section 1, Article 12, so that colored men may become a part of the regular militia force for the defense of the State, should be renewed.

#### THE FIFTY-SIXTH GENERAL ASSEMBLY (1889).

The session of 1889 was predominantly Democratic. The Senate consisted of 28 Democrats and 22 Republicans, and the House of 58 Democrats and 42 Republicans. An unusually large number of constitutional measures were proposed. Nine amendments were adopted and referred to the succeeding General Assembly. These amendments authorized the General Assembly to prescribe the qualifications necessary to practice law; admitted negroes to the militia; prescribed a year's residence in the State to achieve the right of suffrage; fixed the term of State and county officers at four years; increased the membership of the Supreme Court; and provided unlimited legislative sessions. Other amendments proposed were designed to prohibit the manufacture and sale of intoxicating liquors, provided that the Supreme Court might sit in divisions or in banc, and provided a somewhat complicated method for the apportionment of representatives. The work of considering constitutional measures was so onerous that on recommendation of the Governor the Senate provided for the appointment of a committee of seven members on the revision of the Constitution.

#### 400. Governor Gray's Recommendation Relative to Constitutional Measures (January 11, 1889).

In his biennial message of January 11, Governor Gray expressed the conviction that no necessity existed for a constitutional convention, but he recommended the adoption of amendments fixing the terms of all State and county officers at four years.

[*House Journal*, Fifty-sixth Session, 47.]

#### CONSTITUTIONAL AMENDMENTS.

At this session it will be appropriate for you to propose and agree to such amendments to the Constitution as your wisdom may suggest or experience has shown to be necessary. The present instrument, which was adopted nearly forty years ago, has not been changed except on two occasions.

While it is advisable, and in some cases necessary, that some of



its provisions should be amended, it is not believed that a necessity exists for a constitutional convention.

Every proper amendment can be effected in the manner provided by the Constitution, at a small expense to the people and without presenting the opportunity of unsettling a system of government well understood and tested by long service.

I would recommend that the Constitution be so amended that all State and county officers shall hold their offices for a term of four years, to commence on a fixed day, and with, perhaps, a few exceptions, be ineligible to hold the same more than four years in any period of eight years. No good reason seems to exist why the term of certain officers should be limited to two years, while others whose duties and responsibilities are no greater should have a term of four years. It is my opinion that two years is too short a period for any officer to acquire that knowledge of the duties of his office necessary to enable him to discharge the same with the degree of efficiency expected by the public. There has always been manifested a willingness to continue a faithful official four years in office; but at the same time a strong public sentiment seems to prevail against electing an administrative officer for a longer period.

All temptation should be, as far as possible, removed from every officer to use his office or neglect his duties to secure a reelection, and thereby allow such officer to devote strictly his time to the duties thereof and render the most efficient public service. The designation of a fixed day on which terms should begin would secure uniformity. In the case of State officers it has frequently occurred, and may occur again, that new State officers have come into possession of their respective offices during the first days of the legislative session, and having had no opportunity to become acquainted with their duties, are not competent and qualified by experience to speak in relation to matters which concern their offices and the public welfare.

The sources of public information should be the very best. If the terms of State officers commenced on the first day of April succeeding their election, the General Assembly would have the advantage of the counsel and assistance of the officials, who could give intelligent and valuable information in relation to the business of their respective departments of the government.

The terms of county officials should commence on the first day of January succeeding their election.

Our State elections should be determined upon State issues



and be as far removed as possible from national questions, and I would recommend that all State and county elective officers be chosen at the general election occurring between the Presidential elections.

In order that amendments to the Constitution may be properly framed, receive the consideration they deserve and have their passage facilitated, I would suggest that you appoint a joint committee on constitutional amendments.

#### 401. Admitting Negroes to the Militia (January 17, 1839).

An amendment admitting negroes to the militia was introduced in the House on January 17 by Mr. A. Eugene Davis, a Republican, and referred to the Committee on Judiciary. On January 27, the committee presented a divided report; the majority report recommended indefinite postponement, and the minority report recommended passage. The minority report was substituted for the majority report and the resolution was then adopted by a vote of 79-3. On March 4, the resolution was reported to the Senate and referred to the Committee on Revision of the Constitution. On March 5, the committee made a favorable report, and on March 11, the resolution was adopted by the Senate by a vote of 41-0.

[*Senate Journal, Fifty-sixth Session, 1124.*]

House joint resolution No. 9 proposing an amendment to Section 1 of Article 12 of the Constitution.

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed, to-wit: Amend Section 1 of the twelfth article to read as follows:

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as be exempted by the laws of the United States, or of this State, and shall be organized, officered, armed, equipped and trained in such a manner as may be provided by law.

*Resolved,* That in submitting this amendment to the electors to be voted upon it shall be designated as Amendment No. 7.

Two other similar resolutions on the composition of the militia were introduced, one in the House, the other in the Senate. The unsuccessful House resolution was introduced on January 16 by Mr. John W. Ridlen, a Republican, and was referred to the Judiciary Committee. On February 27, the committee submitted a divided report. The majority report recommended indefinite postponement; the minority report recommended passage. The majority report was concurred in.

[*House Journal, Fifty-sixth Session, 122.*]

A joint resolution proposing an amendment to Section 1, Article 12 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit: Amend Section 1 of Article 12 by striking out the word "white" contained in said section.

*Resolved, further,* That in voting on this amendment it shall be designated and known as Amendment No. 6.

The Senate resolution was introduced on January 19, by Mr. Thomas E. Boyd, a Republican, and was referred to the Judiciary Committee. On February 13, the committee submitted a favorable report but no further action was taken.

[*Senate Journal, Fifty-sixth Session, 177.*]

Joint resolution No. 11 proposing an amendment to Section 1, Article 12 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit: Amend Section 1 of Article 12 by striking out the word "white" contained in said section.

*Resolved, further,* That in voting on this amendment it shall be designated and known as Amendment No. 5.

#### 402. Qualifications to Practice Law (January 18, 1889).

The lawyers amendment, prescribing the qualifications to practice law, was introduced in the House on January 18 by Mr. A. Eugene Davis, and referred to the Judiciary Committee. On February 27 the committee submitted a favorable report, and the amendment was adopted by a vote of 76-5. The resolutions were referred, in the Senate, to the Committee on Revision of the Constitution. The resolution passed the Senate on March 11 by a vote of 43-0.

[*Senate Journal, Fifty-sixth Session, 1124.*]

House joint resolution No. 11 proposing amendment to Section 21 of Article 7 of the Constitution.

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed, to-wit: Amend Section 21 of Article 7, to read as follows:

Sec. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of jus-

tice, upon such conditions and terms as may be prescribed by law.

*Resolved*, That in submitting this amendment to the electors to be voted upon it shall be designated as Amendment No. 9.

#### 403. Residential Qualifications for Suffrage (January 21, 1889).

A resolution proposing an amendment to the Constitution prescribing the residence qualifications for suffrage at one year, was introduced in the House on January 21 by Mr. Frank P. Foster, a Democrat, and referred to the Judiciary Committee. On February 27, the committee submitted a favorable report, and the resolution was adopted by a vote of 87-0. On March 1, the resolution was received by the Senate and referred to the Committee on Revision of the Constitution. On March 5, the committee reported favorably. On March 11, the resolution passed the Senate by a vote of 43-0.

[*Senate Journal, Fifty-sixth Session, 1507.*]

House joint resolution No. 13 proposing an amendment to Section 2 Article 2, of the Constitution.

*Resolved by the House of Representatives, the Senate concurring*, That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 2, the same being section eighty-four of the Revised Statutes of 1881, to read:

In all elections, not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years or upward, who shall have resided in the State during one year, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such elections, and every male of foreign birth of the age of twenty-one years and upward who shall have resided in the United States one year, and shall have resided in this State during one year, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such elections, and shall have declared his intention to become a citizen of the United States conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

*Resolved*, That, in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

#### 404. Terms of County Officers (January 21, 1889).

The amendment fixing the terms of county officers at four years and declaring them ineligible to serve more than four years out of any eight, was in-

troduced in the House on January 21 by Mr. John T. Beasley, a Democrat, and referred to the Judiciary Committee. On February 27, the committee submitted a favorable report and the resolution passed by a vote of 80-0. The Senate Committee on Revision of the Constitution reported favorably on March 5. On March 11, the resolution passed the Senate by a vote of 44-0.

[*House Journal, Fifty-sixth Session, 919.*]

House joint resolution No. 14 proposing an amendment to Section 2 of Article 6 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Sec. 2. There shall be elected, in each county, by the voters thereof, at the general election to be held in the year eighteen hundred and ninety-four, and every four years thereafter, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, commencing on the first Monday in January after their election, and no person shall be eligible to hold any of said offices, except that of surveyor, more than four years, or one term in any period of eight years. Provision shall be made by law for filling vacancies in any of such offices.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

Three other resolutions on the same subject were introduced, one in the House, and two in the Senate. The House resolution was introduced on January 16 by Mr. Clinton F. Hesler, a Republican, and was referred to the Judiciary Committee. On February 27, the committee presented a divided report. The majority report recommended indefinite postponement, the minority report recommended passage. The majority report was concurred in.

[*House Journal, Fifty-sixth Session, 117.*]

House joint resolution proposing an amendment to Section 2 of Article 6 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and sur-

veyor, who shall severally hold their offices for four years, from the first day of January after their election; and, no person shall be eligible to election to either of said offices, except that of surveyor, more than four years, or one term, in any period of eight years: *Provided*, That in case of the appointment of any one of such officers to fill any vacancy, such appointee shall be appointed only to hold until the first of January succeeding the next general election after such vacancy occurs.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

One of the Senate resolutions was introduced on January 18, by Mr. Thomas E. Boyd, a Republican. An amendment was proposed and accepted to include prosecuting attorneys in the list of officers serving four years. The resolution was then referred to the Judiciary Committee. A divided report was presented and the resolution was never advanced beyond second reading.

[*Senate Journal, Fifty-sixth Session, 117.*]

A joint resolution proposing an amendment to Section 2 of Article 6, of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendments to the Constitution of the State of Indiana, be and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 6 to read:

Sec. 2. There shall be elected in each county by the voters thereof at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for four years from the first day of January after their election, and no person shall be eligible to election to either of said offices, except that of surveyor, more than four years, or one term in any period of eight years. *Provided*, That in case of appointment of any one of such officers to fill any vacancy, such appointee shall be appointed only to hold until the first of January succeeding the next general election after such vacancy occurs.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

On January 21, Mr. H. M. Logsdon, a Democrat, introduced a resolution in the Senate defining the terms of county officers. The resolution was referred to the Judiciary Committee and never advanced beyond second reading.



[*Senate Journal, Fifty-sixth Session, 198.*]

Joint resolution No. 14 proposing an amendment to Section 2 of Article 6 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Sec. 2. There shall be elected in each county by the voters thereof at the general election, to be held in the year Eighteen Hundred and Ninety-four, and every four years thereafter, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, commencing on the first Monday in January after their election, and no person shall be eligible to hold said offices, except that of surveyor, more than four years, or one term in any period of eight years; provision shall be made by law for filling vacancies in any of such offices.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. —.

#### 405. Term of Clerk of Supreme Court (January 21, 1889).

A resolution proposing an amendment to the Constitution declaring the Clerk of the Supreme Court ineligible for more than four years out of any eight, was introduced in the House on January 21, by Mr. Charles G. Conn, a Democrat, and referred to the Judiciary Committee. On February 27, the committee reported favorably and the resolution was adopted by a vote of 85-0. The resolution was adopted by the Senate on March 11, by a vote of 43-0.

[*Senate Journal, Fifty-sixth Session, 1509.*]

House joint resolution No. 15 proposing an amendment to Section 7 of Article 7 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit:

Sec. 7. There shall be elected by the voters of the State, at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a clerk of the Supreme Court, whose duties shall be prescribed by law, who shall hold his office for four years, commencing on the first Monday in January, after his election, and shall not be eligible to elec-

tion to more than one term of four years in any period of eight years.

*Resolved*, That, in submitting this amendment to the electors of the State, to be voted on, it shall be designated as Amendment No. 3.

Two similar resolutions on the same subject were introduced one in the House, and one in the Senate. The Senate resolution was introduced on January 19, by Mr. Thomas E. Boyd, and was referred to the Judiciary Committee. On February 13 the committee submitted a divided report and no further action was taken.

[*Senate Journal, Fifty-sixth Session, 178.*]

Joint resolution No. 10, proposing an amendment of Section 7 of Article 8 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit:

Sec. 7. There shall be elected by the voters of the State of Indiana, a clerk of the Supreme Court, whose duties shall be prescribed by law, who shall hold his office four years, and shall not be eligible to election to more than one term of four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 4.

The House resolution was introduced on January 16 by Mr. Joseph Stubblefield, a Republican, and referred to the Judiciary Committee. On February 27, the committee returned a divided report, and the majority report recommending indefinite postponement was concurred in.

[*House Journal, Fifty-sixth Session, 135.*]

Joint resolution proposing an amendment to Section 7 of Article 8 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is, hereby proposed and agreed to, to-wit:

Sec. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, whose duties shall be prescribed by law, who shall hold his office four years, and shall not be eligible

to election more than one term of four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4.

**406. Terms of State Officers (January 21, 1889).**

An amendment fixing the terms of State officers at four years and declaring any person ineligible for more than one term out of any eight years, and constituting the attorney-general a constitutional office, was proposed in a resolution introduced in the House on January 21 by Mr. Adams of Whitley, a Democrat, and was referred to the Judiciary Committee. On February 27, the committee reported favorably and the resolution was adopted by a vote of 82-0. The resolution passed the Senate on March 11, by a vote of 43-0.

*[Senate Journal, Fifty-sixth Session, 1510.]*

House joint resolution No. 16 proposing an amendment to Section 1 of Article 6 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby, proposed and agreed to, to-wit:

Sec. 1. There shall be elected by the voters of the State at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a Secretary, an Auditor and Treasurer of State, and an Attorney General, who shall severally hold their offices for four years, commencing on the first Monday in January after their election. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than one term of four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4.

Four other resolutions on this same subject were introduced, three in the Senate, and one in the House. The House resolution was introduced on January 16 by Mr. Clinton F. Hesler and referred to the Judiciary Committee. On February 27, on recommendation of the committee, the resolution was indefinitely postponed.

*[House Journal, Fifty-sixth Session, 116.]*

House Joint Resolution proposing an amendment to Section 1 Article 6 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is, hereby proposed and agreed to, to-wit: Amend Section 1 of Article 6 to read as follows:

Section 1. There shall be elected by the voters of the State a Secretary, an Auditor, a Treasurer of State, an Attorney General, and a Superintendent of public instruction, who shall hold their offices for four years; they shall perform such duties as may be enjoined by law; and no person shall be eligible to election to either of said offices more than one term, or four years in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

The Senate resolutions were introduced on January 15, by Mr. Thomas E. Boyd, and on January 21, by Mr. J. M. Barrett and Mr. F. M. Griffith; the text of only one of these resolutions has been preserved; and none of the measures were advanced beyond second reading. The resolution introduced by Senator Barrett is as follows:

*[Senate Journal, Fifty-sixth Session, 196.]*

A joint resolution proposing an amendment to Section 1 of Article 6 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit:

Section 1. There shall be elected by the voters of the State, at the general election to be held in the year eighteen hundred and ninety-two and every four years thereafter, a Secretary, an Auditor and Treasurer of State, and an Attorney General, who shall severally hold their offices for four years commencing on the first Monday in January after their election. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than one term of four years in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. —.

The title of Mr. Griffith's resolution was as follows:

*[Senate Journal, Fifty-sixth Session, 197.]*

A joint resolution proposing an amendment to Section 7 of Article 7 of the Constitution of the State of Indiana.

**407. Term of State Superintendent (January 22, 1889).**

A resolution proposing an amendment to the Constitution fixing the term of state superintendent at four years was introduced in the House on January 22, by Mr. Samuel S. Harrell, a Democrat, and referred to the Judiciary Committee. On February 27, on recommendation of the committee, the resolution passed the House by a vote of 83-0. The resolution passed the Senate on March 11, by a vote of 42-0.

[*Senate Journal, Fifty-sixth Session, 1511.*]

House Joint Resolution No. 17 proposing an amendment to Section 8 of Article 8 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Sec. 8. There shall be elected by the voters of the State at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a State Superintendent of Public Instruction, who shall hold his office for a term of four years, commencing on the first Monday in January after his election, whose duties and compensation shall be prescribed by law, and who shall not be eligible to hold said office more than one term of four years in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 5.

A similar resolution was introduced in the Senate on January 21, by Mr. S. E. Urmston, a Democrat, and referred to the Committee on Revision of the Constitution. On February 13 the committee submitted a favorable report, but no further action was taken.

[*Senate Journal, Fifty-sixth Session, 199.*]

A joint resolution proposing an amendment to Section 8 of Article 8 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Sec. 8. There shall be elected by the voters of the State, at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a State Superintendent of Public Instruction, who shall hold his office for a term of four years, commencing on the first Monday in January after his elec-



tion, whose duties and compensation shall be prescribed by law, and who shall not be eligible to hold said office more than one term of four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. —.

**408. Duration of Sessions of General Assembly (February 5, 1889).**

On February 5, Mr. William H. Shields, a Republican, introduced a joint resolution in the House proposing an amendment authorizing the General Assembly to sit until all necessary business was transacted. On February 27, the resolution was adopted by the House by a vote of a majority of 78-2. On March 11, the resolution passed the Senate by a vote of 44-1.

[*House Journal, Fifty-sixth Session, 932.*]

House Joint Resolution No. 21.

*Resolved by the House of Representatives, the Senate concurring*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit: Amend Section 29, the same being Section 125 of the Revised Statutes of 1881, of Article 4, to read as follows:

The members of the General Assembly shall receive for their services an annual salary, to be fixed by law, but no increase of compensation shall take effect during the session at which such increase may be made. All regular and special sessions of the General Assembly shall continue and be in session until the legislative and all business required to be effected thereby shall have been completed, or so long as by the members thereof may be deemed advisable.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 8.

**409. Membership and Divisions of Supreme Court (February 13, 1889).**

Several amendments were proposed relative to an increase in the membership and a division of the Supreme Court for the dispatch of business. On February 13, Mr. John T. Beasley, a Democrat, introduced a resolution in the House fixing the membership of the Supreme Court. The resolution was referred to the Judiciary Committee. On February 27, the committee submitted a favorable report and the resolution was adopted by the House by a vote of 56-23. On March 11, the resolution was adopted by the Senate by a vote of 43-0.

[*Senate Journal, Fifty-sixth Session, 1513.*]

House joint resolution No. 23 proposing amendment of Sections 2 and 5 of Article 7 of the Constitution.

*Resolved by the House of Representatives, the Senate concurring,* That the following amendments be made to the Constitution of the State of Indiana, to-wit: That Section 2 of Article 7 be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than nine Judges, a majority of whom shall form a quorum. They shall hold their offices for eight years, if they so long behave well: *Provided*, that the General Assembly shall provide by law for dividing the Judges to be elected into classes, as nearly equal as may be; also, the time at which the Judges shall be elected, and for filling any vacancy that may occur in such court. The seats of the first class shall be vacated at the expiration of four years, and those of the second class at the expiration of eight years, so that one-half thereof, as nearly as may be, shall be chosen every four years thereafter.

That Section 5 of said Article 7 be amended to read as follows:

Sec. 5. The General Assembly may provide by law for the Supreme Court to sit in divisions or banc; also, the manner in which the decisions shall be rendered and the business conducted.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 6.

On January 5, Mr. H. U. Johnson, a Republican, introduced a resolution in the Senate increasing the number of Judges of the Supreme Court to eleven. The resolution was referred to the Judiciary Committee and never reported back to the Senate.

[*Senate Journal, Fifty-sixth Session, 84.*]

A resolution proposing an amendment to Section 2 of Article 7 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to Section 2 of Article 7 of the Constitution of the State of Indiana be, and the same is, hereby proposed and agreed to, to-wit:

Amend said section by striking out the word "five" before the word "Judges" therein, and by inserting in lieu of said word so stricken out the word "eleven."

*Resolved, further*, In submitting this amendment to the elec-

tors of the State to be voted on, it shall be designated as Amendment No. 1.

On January 19, Mr. Thomas E. Boyd introduced a resolution in the Senate fixing the number of Supreme Court judges at not less than five nor more than nine. The resolution was referred to the Judiciary Committee. On February 13, a divided report was presented and no further action was taken.

[*Senate Journal, Fifty-sixth Session, 177.*]

Joint resolution No. 9 proposing an amendment to Section 2 of Article 7 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is, hereby proposed and agreed to, to-wit: Amend Section 2 of Article 7 to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than nine judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well: *Provided*, That the General Assembly shall provide by law, after the taking effect of this amendment, for dividing the judges into three classes, as nearly as may be, so that the seats of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years, and those of the third class at the expiration of six years, so that one-third thereof, or as nearly as may be, shall be chosen every two years thereafter.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 3.

On February 13, the Senate Judiciary Committee submitted an amendment relative to the Judiciary, which was concurred in, but the resolution was never advanced beyond second reading.

[*Senate Journal, Fifty-sixth Session, 632.*]

A joint resolution proposing amendment of Sections 2 and 5 of Article 7 of the Constitution:

*Resolved by the Senate, the House of Representatives concurring*, That the following amendment be made to the Constitution of the State of Indiana, to-wit: That Section 2 of Article 7 be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than nine judges, a majority of whom shall form a quorum. They shall hold their offices for eight years, if they so

long behave well: *Provided*, That the General Assembly shall provide by law for dividing the judges to be elected into classes as nearly equally as may be; also, the time at which the judges shall be elected, and for filling any vacancy that may occur in such Court. The seats of the first class shall be vacated at the expiration of four years, and those of the second class at the expiration of eight years, so that one-half thereof, as nearly as may be, shall be chosen every four years thereafter.

That Section 5 of said Article 7 be amended to read as follows:

Sec. 5. The General Assembly may provide by law for the Supreme Court to sit in divisions or in banc; also, the manner in which the decision shall be rendered and the business conducted.

*Resolved*, That, in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 5.

On January 16, Mr. Joseph Stubblefield introduced a resolution in the House providing that the Supreme Court should consist of not less than five nor more than nine judges. The resolution was referred to the Judiciary Committee, who submitted a divided report on February 27; the majority report recommending indefinite postponement was concurred in.

[*House Journal, Fifty-sixth Session, 1855.*]

A joint resolution proposing an amendment to Section 2 of Article 7 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 7 to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than nine judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well: *Provided*, That the General Assembly shall provide by law, after the taking effect of this amendment, for dividing the judges into three classes, as nearly as may be, so that the seats of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years, and those of the third class at the expiration of six years, so that one-third thereof, as nearly as may be, shall be chosen every two years, thereafter.

*Resolved*, That in submitting this amendment to the electors of the State, it shall be designated as Amendment No. 3.

On February 8, Mr. William A. Hughes, a Democrat, introduced an elaborate resolution in the House declaring that the Supreme Court should con-

sist of ten judges, and providing that the court should be divided into sections for the consideration of cases. The resolution was referred to the Judiciary Committee and never reported back.

[*House Journal, Fifty-sixth Session, 487.*]

House joint resolution No. 22 proposing amendments to the Constitution of the State of Indiana in relation to the Supreme Court.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendments to the Constitution of the State of Indiana be submitted to the people of this State for their adoption or rejection.

Sec. 2. Amend Section 2, Article 7, to read as follows:

Sec. 2. The Supreme Court shall consist of ten Justices, a majority of whom shall constitute a quorum; and shall hold their offices seven years, if they shall so long behave well.

The General Assembly shall have power to increase the number of justices from time to time as the business of the Court shall require it.

The Chief Justice shall be selected annually by a majority vote of the members of the Court, on the first day of the earliest session of the Court in each year, and shall serve one year.

He shall immediately after his election divide the Justices into sections of three each, and thereafter at the end of six months shall divide them into other sections composed of new members, which sections shall sit separately each with the Chief Justice as the presiding officer and a member thereof, and shall hear and determine all causes and matters submitted to the Court and allotted to them respectively.

Three members of any section shall form a quorum thereof to transact business and adjudicate all matters and appeals.

All appeals and matters upon the docket, upon submission to the Court, shall be distributed by the Chief Justice from time to time among the several sections, and the decision of any section shall be final, except in any case of disagreement among the members of any section upon any question, or in any case of disagreement thereon between two or more sections, or where two Justices or more shall demand that such questions shall be considered and adjudicated by the whole Court, or where the affirmance of a judgment involves the infliction of the penalty of death, in which events such questions, matters or appeals, shall be adjudicated by the whole Court.

Whenever any question, matter or appeal which has been



adjudicated by any section shall be referred to the whole court for any cause, such adjudication shall be vacated if such reference is demanded or occurs, as hereinbefore provided, within forty days from and after such adjudication.

The whole Court shall, without delay, meet and consider all matters referred thereto, and a majority of the Justices shall constitute a quorum to do business, and all questions must be adjudicated by not less than a unanimous quorum.

In the absence of the Chief Justice the whole court and each section may select a temporary presiding officer.

This section shall be in force immediately upon its adoption, and the Governor shall forthwith appoint a sufficient number of Justices to complete the number hereby required.

Such appointment shall be so made as that the Justices of the Supreme Court shall be equally distributed among the districts existing at the time, and the Justices so appointed shall hold their offices until their successors are elected at the next general election, and duly qualified to serve thereafter the full term of seven years; and thereafter every Justice elected to fill a vacancy shall serve during the unexpired term of the Justice whose term he is elected to fill; in the interim between the vacation of such office and such election the vacancy shall be filled by appointment of the Governor.

The Justices now in office may serve out their full terms of six years, and at the ends of such terms their successors shall be elected for seven years.

Amend Section 3 Article 7, to read as follows:

Sec. 3. The State shall, after the first election, be divided into as many districts as there are Justices, to be formed of contiguous territory by counties as nearly equal in population as possible, and one shall be chosen by the voters of the whole State from each district, which first election shall be from the present districts by all of said voters, as hereinbefore provided.

Amend Sections 5 and 6, Article 7, to read as follows:

Secs. 5 and 6. All decisions shall be in writing. The Court shall, in its discretion, designate what opinions shall be printed in the reports at the term in which the appeal is finally disposed of.

On January 15, Senator Theodore Shockney introduced a resolution increasing the membership of the Supreme Court to 13, 15, 17 or 19 judges. The resolution was never reported from committee. The resolution is not given, but it proposed to amend Sections 2 and 3 of Article 7 of the Constitution.

#### 410. **Manufacture and Sale of Intoxicating Liquor (January 18 and 22, 1889).**

A resolution was introduced in each House proposing an amendment prohibiting the manufacture and sale of intoxicating liquor. The Senate resolution was introduced on January 22, by Mr. George W. Alford, a Republican, and was referred to the Committee on Temperance. On March 1, on recommendation of the committee, the resolution was indefinitely postponed.

*[Senate Journal, Fifty-sixth Session, 218.]*

Joint resolution No. 16 proposing to amend the Constitution so as to prohibit the manufacture and sale of intoxicating liquors as a beverage within this State.

WHEREAS, It is the right as well as the privilege of the people to settle all questions of internal and local policy; and,

WHEREAS, The question of the prohibition of the traffic in intoxicating liquors is one in which they have a right to express an opinion in a non-partisan and fundamental way; therefore,

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana, be and the same is hereby proposed, to-wit: To add as Section 83 [38?] to Article 1, of said Constitution the following:\*

Sec. 83. No person shall hereafter manufacture for sale as a beverage, shall sell as a beverage, or keep for sale as a beverage, any intoxicating liquors of any character whatever within this State. It shall be the duty of the General Assembly to provide by law for the proper enforcement of this section.

*Resolved, further,* That the foregoing proposed amendment be and the same is hereby referred to the legislature to be chosen at the next general election for members of the General Assembly, and that the Secretary of State cause the same to be published three months prior to said election in two papers of general circulation and of different parties, in each Congressional district of the State, or as may be provided by law in lieu thereof.

The House resolution was introduced on January 18, by Mr. Elisha B. Reynolds and referred to the Committee on Temperance; on February 27 the resolution was indefinitely postponed.

*[House Journal, Fifty-sixth Session, 929.]*

House joint resolution No. 12 proposing to amend the Constitution of the State of Indiana so as to prohibit the manufacture and sale of intoxicating liquors as a beverage:

WHEREAS, It is the right as well as the privilege of the people to settle all questions of internal and local policy; and,

\*((The consecutive numbering of documents established in Indiana *Revised Statutes*, 1881, denotes Article 1, Section 37, of the 1851 Indiana Constitution as Section 82 (p. 16).))

WHEREAS, The question of the prohibition of the manufacture and sale of intoxicating liquors as a beverage is one in which they have a right to express an opinion in a non-partisan and fundamental way; therefore be it

*Resolved*, By the General Assembly of the State of Indiana, that the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed, to-wit: To add as Section 83 [38?] to Article 1 of said Constitution the following:

Sec. 83. No person shall hereafter manufacture for sale as a beverage, shall sell as a beverage, or keep for sale as a beverage, any intoxicating liquors of any character whatever within this State. It shall be the duty of the General Assembly to provide by law for the enforcement of this section.

*Resolved, further*, That the foregoing proposed amendment be, and the same is hereby, referred to the legislature to be chosen at the next general election for members of the General Assembly, and that the Secretary of State cause the same to be published in two papers in each Congressional District of the State three months previous to the election.

*Resolved, further*, That in submitting this amendment to the Constitution to the electors of the State to be voted on it shall be designated as Amendment No. —.

#### 411. Apportionment of Senators and Representatives (January 16, 1889).

On January 16, Mr. George A. Adams, a Republican, introduced a resolution in the House proposing an elaborate scheme for the apportionment of senators and representatives. The resolution was referred to the Committee on Ways and Means, and indefinitely postponed.

[*House Journal, Fifty-sixth Session, 131.*]

Joint resolution No. 5 proposing an amendment to the Constitution of the State:

*Resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State be, and the same is hereby proposed, to-wit: Amend the State Constitution by adding to the sixth section of the fourth article the following clauses:

(a) A representative district shall not be composed of more than three counties, and no county shall be joined with another county, or other counties in more than one senatorial district.

(b) Representative districts, so nearly as possible, shall be

made equal one with another in respect to enumerated adult male inhabitants, and senatorial districts shall likewise be equal one with another, and no apportionment or part thereof shall be made with the view of compensating any county or district for lack of representation in one branch of the legislature with increased representation in the other branch.

(c) The basis for making an apportionment shall be a representative unit and a senatorial unit of representation—these units to be obtained by dividing the total number of adult male inhabitants of the State (as last enumerated) by the total number of representatives and of senators respectively.

(d) Each county shall have as many representatives as it shall have representative units of inhabitants, and as many senators as it shall have senatorial units; and if a county not having a full representative unit shall have as much as ninety per centum thereof, it shall have one representative; and if a county not having a full senatorial unit shall have as much as ninety-five per centum thereof, it shall have one senator.

(e) Senators and representatives not allotted to single counties or parts thereof shall be apportioned to senatorial districts of two or three counties each, and to representative districts of two counties each, the counties to be so combined as to give representation to the largest possible numbers of voters otherwise unrepresented: *Provided*, That no county or part of a county shall be left wholly without representation in either branch of the legislature.

#### 412. Inspection of Journals (March 11, 1889).

On March 11, both the Senate and the House adopted a resolution, that a special committee of three be appointed by the President, from the senators, to act with a similar committee on the part of the House of Representatives, to inspect the journal to see that Section 1 of Article 16 is complied with in the matter of records touching the passage of the constitutional amendments.

#### 413. Filing of Proposed Amendments (March 11, 1889).

On March 11, the last day of the 56th Session, in order to insure the proper disposal of the amendments adopted, the following resolution was proposed and adopted.

*[House Journal, Fifty-sixth Session, 1870.]*

I move that House joint resolutions Nos. 9, 11, 13, 14, 15, 16, 19, 21, 23 and 18, proposing amendments to the Constitution, be



ordered enrolled, and that the principal clerk of this House be instructed to file said enrolled joint resolutions in the office of the Secretary of State, to be by him presented to the next General Assembly.

Which motion prevailed.

House Joint Resolutions Nos. 17, 21, 23, 18, 16, 9, 13, 11, 15, 14, were ordered enrolled and filed with the Secretary of State and referred to the next succeeding General Assembly for further consideration.

#### **414. Republican Platform of 1890—Four Year Terms for State and County Officers (September 10, 1890).**

The Republican State Convention of 1890 was held in Indianapolis on September 10. The following resolution was adopted endorsing a constitutional amendment providing four year terms for all State and county officers.

*[Indianapolis Journal, September 11, 1890.]*

The constitutional amendment adopted by an immense majority in March, 1881, authorizing the legislature to enact laws grading the compensation of officers according to population and services required, expressed the demand of the people for such laws. In party platforms and public utterances the democratic party has often declared in favor of such legislation, but having often a majority in both branches of the legislature, it has suffered this amendment to remain a dead letter for nine years. We favor legislation under this amendment, by which officers shall be paid fixed salaries, having regard to population and the character of the services rendered, and the prices paid for similar work in other occupations, and all fees collected be paid into the proper treasury for the public benefit. Such legislation should take effect at the close of officials' terms for which elections have been made at the time of its enactment, and should be followed by a constitutional amendment making the terms of State and county officers, except the judiciary, four years, and rendering incumbents ineligible for re-election in any period of eight years.

#### **THE FIFTY-SEVENTH GENERAL ASSEMBLY (1891).**

The Democrats had a large majority in both Houses of the 57th General Assembly of 1891. The Senate consisted of 35 Democrats and 15 Republicans, and the House of 73 Democrats and 27 Republicans. Nine amendments had been adopted by the 56th General Assembly, and submitted to the consideration of the 57th General Assembly. These nine amendments: (1) admitted negroes to the militia, (2) authorized the General Assembly to pre-



scribe qualifications for the practice of law, (3) raised the residence suffrage qualifications from 6 months to one year, (4) provided for the election of State and county officers for terms of four years, (5) removed all limitation on legislative sessions, (6) and provided for an increase in the membership of the Supreme Court. Twelve amendments were proposed at the 57th session, including those pending from the previous session. None of the pending amendments was adopted. Four amendments were adopted which provided for: (1) the taxation of the net or gross earnings of corporations, (2) the election of State and county officers for terms of four years, and (3) extended the length of regular sessions to 100 days.

#### 415. Legality of Pending Amendments (January 19, 1891).

At the beginning of the 57th session serious doubts existed as to whether the pending amendments had been legally adopted. Accordingly, on January 19, on motion of Mr. Jefferson H. Claypool, the following resolution of inquiry was adopted by the House, and the Speaker appointed Messrs. William S. Oppenheim, James E. McCullough and Jefferson H. Claypool as members of the committee.

[*House Journal, Fifty-seventh Session, 201.*]

House resolution No. 44.

WHEREAS, At the fifty-sixth session of the General Assembly of the State of Indiana, certain amendments of the Constitution of the State of Indiana were proposed and adopted by the Senate and House; therefore,

*Be it Resolved*, That the Speaker of this House appoint a committee of three to inquire into and see that said amendments are properly presented to this House at an early day for consideration.

#### 416. Report of Committee on Constitutional Amendments (March 4, 1891).

The special committee made a divided report on March 4. The majority report was signed by Messrs. John T. Beasley<sup>4</sup> and Oppenheim. It expressed the conviction that eight of the pending amendments were properly pending, including: (1) the election of county officers for terms of four years (Resolution No. 14); (2) the election of a clerk of the Supreme Court for a term of four years (Resolution No. 15); (3) the election of State officers for terms of four years (Resolution No. 16); (4) the election of a State superintendent of public instruction for a term of four years (Resolution No. 17); (5) fixing the membership of the Supreme Court (Resolution No. 23); (6) admitting negroes to the State militia (Resolution No. 9); (7) unlimited sessions of the General Assembly (Resolution No. 21); (8) authorizing the General Assembly to prescribe the qualifications for the practice of law (Resolution No. 11). They found that the remaining amendment, relative to the residential qualifications for suffrage, was not properly pending.

4. Beasley was not named as a member of the original committee, but was evidently named later.

## MAJORITY REPORT OF PENDING AMENDMENTS

[*House Journal, Fifty-seventh Session, 1255.*]

Your special committee of three, to whom was referred the matter of investigation of the status of certain proposed amendments to the Constitution, having had said matter under investigation, a majority of your committee beg leave to submit the following report:

We are of the opinion that the said proposed amendments, numbered 14, 15, 16, 17, 23, 9, 21, 11, respectively, are duly pending before this General Assembly, to be adopted or otherwise disposed of as this body may determine.

As to the other proposed amendments, we find that they are not duly pending for the reason that they were not properly entered on the Journals of the House and Senate with the ayes and noes therein at the last session of the General Assembly.

JOHN T. BEASLEY,  
W. S. OPPENHEIM.

## MINORITY REPORT OF COMMITTEE ON PENDING AMENDMENTS.

The minority report was signed by Mr. Jefferson H. Claypool. He thought there was grave doubt whether the amendments had been legally adopted and he recommended that if they were deemed worthy of adoption they be introduced *de novo*.

[*House Journal, Fifty-seventh Session, 1256.*]

The undersigned, a member of your special committee, appointed in pursuance to a resolution introduced by Mr. Claypool, to investigate and report to the House as to the present legal status of the proposed constitutional amendments, begs leave herewith to present the following minority report:

It appears upon investigation that neither the proposed amendments to the Constitution, nor the resolutions embodying the same, were signed by the Speaker of the House of Representatives and the President of the Senate, that said amendments were not properly enrolled or properly filed with the Secretary of State, that said amendments were not properly referred to the present General Assembly, and that in the opinion of the undersigned the same are not legally pending before this body.

At least there is very grave doubt that if said proposed amendments were passed by this General Assembly and submitted to a vote of the people, that they would ever be effective for the rea-

sons above specified. The expense of an election under the present law is very great, and it seems to me that it would be very unwise to incur such expense when there is good reason to believe that such expense might be wholly useless. Again, if said proposed amendments were passed and decided unconstitutional, much time would be lost.

For these reasons I would recommend that said proposed amendments, if deemed worthy of adoption, be introduced *de novo* in the present General Assembly. CLAYPOOL.

#### 417. Rejection of Pending Amendments (March 9, 1891).

The committee reports were made the special order for the following day, but there is no record that the matter was taken up until March 9, when the committee presented a unanimous report expressing doubt as to whether the amendments were properly pending and recommending that they be voted down and that four other proposed amendments, agreed to by the committee, be adopted. The report of the committee was concurred in and House Joint Resolutions Nos. 9, 11, 13, 14, 15, 16, 17, 21 and 23, embodying the amendments proposed by the 56th General Assembly were taken up *seriatim* and voted down.

[*House Journal, Fifty-seventh Session, 1461.*]

Your special committee, to whom was referred the subject of the pending proposed amendments to the Constitution, have had the same under consideration, and they report that there is doubt as to whether said proposed amendments are properly pending before this General Assembly, and recommend that the same be voted down, and four other proposed amendments, prepared by the committee, be agreed to, and referred to the General Assembly to be chosen at the next election.

J. E. McCULLOUGH,  
Chairman.

#### ADMITTING NEGROES TO STATE MILITIA.

House joint resolution No. 9, designated as Amendment No. 7, was taken up for consideration and rejected by a vote of 1-74.

[*House Journal, Fifty-seventh Session, 1461.*]

House joint resolution No. 9, proposing an amendment to the Constitution, which was adopted by both branches of the General Assembly of 1889, was called up.

House joint resolution No. 9 proposing an amendment to Section 1 of Article 12 of the Constitution:

*Resolved by the House of Representatives, the Senate concurring,*

That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed, to-wit: Amend Section 1 of Article 12 to read as follows:

Section 1. The militia shall consist of all able-bodied male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State, and shall be organized, officered, armed, equipped and trained, in such a manner as may be provided by law.

*Resolved*, That in submitting this amendment to the electors to be voted upon, it shall be designated as Amendment No. 7.

#### LAWYERS AMENDMENT.

House joint resolution No. 11, designated as Amendment No. 9, was rejected by a vote of 1-74.

*[House Journal, Fifty-seventh Session, 1463.]*

House joint resolution No. 11, proposing an amendment to the Constitution, which was adopted by both branches of the Fifty-sixth General Assembly was called up.

House joint resolution No. 11 proposing amendment to Section 21 of Article 7 of the Constitution.

*Resolved by the House of Representatives, the Senate concurring*, That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed, to-wit: Amend Section 21 of Article 7 to read as follows:

Sec. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice upon such conditions and terms as may be prescribed by law.

*Resolved*, That in submitting this amendment to the electors to be voted upon it shall be designated as Amendment No. 9.

#### REGISTRATION AND RESIDENTIAL QUALIFICATIONS OF ELECTORS.

House joint resolution No. 13, designated as Amendment No. 2 was rejected by a vote of 1-74.

*[House Journal, Fifty-seventh Session, 1464.]*

House joint resolution No. 13, proposing an amendment to the constitution, which passed both branches of the Fifty-sixth General Assembly, was called up.

House joint resolution No. 13 proposing an amendment to Section 2 Article 2, of the Constitution:

*Resolved by the House of Representatives, the Senate concurring*: That the following Amendment to the Constitution of the State

of Indiana be, and the same is hereby proposed and agreed to, to-wit: Amend Section 2 of Article 2, the same being Section 84 of the Revised Statutes of 1881, to read:

In all elections, not otherwise provided for in this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during one year, and in the township sixty days, and in the ward, or precinct, thirty days immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upward, who shall have resided in the United States one year, and shall have resided in the State during one year, and in the township sixty days, and in the ward, or precinct, thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States, on the subject of naturalization, shall be entitled to vote in the township, or precinct, where he may reside, if he shall have been duly registered according to law.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

#### UNIFORM FOUR-YEAR TERMS FOR COUNTY OFFICERS.

House joint resolution No. 14, designated as Amendment No. 1, was rejected by a vote of 1-74.

*[House Journal, Fifty-seventh Session, 1465.]*

House joint resolution No. 14, proposing an amendment to the Constitution, which was adopted by both branches of the 56th General Assembly was called up.

House joint resolution No. 14: A joint resolution proposing an amendment to Section 2 of Article 6 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be and the same is hereby proposed and agreed to, to-wit:

Sec. 2. There shall be elected in each county, by the voters thereof, at the general election to be held in the year eighteen hundred and ninety-four, and every four years thereafter, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, commencing on the first Monday in January after their election, and no person shall be eligible to hold any of said offices, except that of surveyor, more than four years, or one term, in any period of eight



years. Provisions shall be made by law for filling vacancies in any of such offices.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

#### TERM OF CLERK OF SUPREME COURT.

House joint resolution No. 15, designated as Amendment No. 3, was rejected by a vote of 1-74.

[*House Journal, Fifty-seventh Session, 1466.*]

House joint resolution No. 15, proposing an amendment to the Constitution, which was adopted by both branches of the Fifty-sixth General Assembly was called up.

House joint resolution No. 15 proposing an amendment to Section 7 of Article 7, of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Sec. 7. There shall be elected by the voters of the State at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a clerk of the Supreme Court, whose duties shall be prescribed by law, who shall hold his office for four years, commencing on the first Monday in January after his election, and shall not be eligible to election to more than one term of four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 3.

#### UNIFORM FOUR-YEAR TERMS FOR STATE OFFICERS.

House joint resolution No. 16, designated as Amendment No. 4, was rejected by a vote of 1-74.

[*House Journal, Fifty-seventh Session, 1467.*]

House joint resolution No. 16, proposing an amendment to the Constitution, which was adopted by both branches of the Fifty-sixth General Assembly, was called up.

House joint resolution No. 16 proposing an amendment to Section 1 of Article 6, of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State

of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Section 1. There shall be elected by the voters of the State, at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a Secretary, an Auditor, and Treasurer of State, and an Attorney-General, who shall severally hold their offices for four years, commencing on the first Monday in January after their election. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than one term of four years in any period of eight years.

*Resolved*, That, in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4.

FOUR-YEAR TERM FOR STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION.

House joint resolution No. 17, designated as Amendment No. 5, was rejected by a vote of 1-74.

[*House Journal, Fifty-seventh Session, 1468.*]

House joint resolution No. 17, proposing an amendment to the Constitution, which was adopted by both branches of the 56th General Assembly, was called up.

House joint resolution No. 17 proposing an amendment to Section 8 of Article 8 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit:

Sec. 8. There shall be elected by the voters of the State at the general election to be held in the year eighteen hundred and ninety-two, and every four years thereafter, a State Superintendent of Public Instruction, who shall hold his office for a term of four years, commencing on the first Monday in January after his election, whose duties and compensation shall be prescribed by law, and who shall not be eligible to hold said office for more than one term of four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 5.

## UNLIMITED DURATION OF SESSIONS OF GENERAL ASSEMBLY.

House joint resolution No. 21, designated as Amendment No. 8, was rejected by a vote of 1-74.

[*House Journal, Fifty-seventh Session, 1470.*]

House joint resolution No. 21, proposing an amendment to the Constitution, which was adopted by both branches of the 56th General Assembly was called up.

House joint resolution No. 21:

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State of Indiana be, and the same is hereby proposed and agreed to, to-wit: Amend Section 29, the same being Section 125 of the Revised Statutes of 1881, of Article 4, to read as follows:

The members of the General Assembly shall receive for their services an annual salary to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. All regular and special sessions of the General Assembly shall continue and be in session until the legislative and all business required to be effected thereby shall have been completed, or so long as by the members thereof may be deemed advisable.

*Resolved,* That in submitting the amendment to the electors of the State to be voted on it shall be designated as Amendment No. 8.

## PERSONNEL OF SUPREME COURT.

House joint resolution No. 23, designated as Amendment No. 23, was rejected by a vote of 1-74.

[*House Journal, Fifty-seventh Session, 1471.*]

House joint resolution No. 23, which was adopted by both branches of the Fifty-sixth General Assembly, the same proposing an amendment to the Constitution, was called up.

House joint resolution No. 23 proposing amendment of Sections 2 and 5 of Article 7 of the Constitution:

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment be made to the Constitution of the State of Indiana, to-wit: That Section 2 of Article 7 be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than nine judges, a majority of whom shall form a quorum. They shall hold their offices for eight years, if they so

long behave well: *Provided*, That the General Assembly shall provide by law for dividing the judges to be elected into classes, as nearly equal as may be; also the time at which the judges shall be elected, and for filling any vacancy that may occur in such court. The seats of the first class shall be vacated at the expiration of four years, and those of the second class at the expiration of eight years, so that one-half thereof, as nearly as may be, shall be chosen every four years thereafter.

That Section 5 of said Article 7 be amended to read as follows:

Sec. 5. The General Assembly may provide by law for the Supreme Court to sit in divisions or in banc; also the manner in which the decisions shall be rendered and the business conducted.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 6.

#### 418. Senate Inquiry as to Pending Amendments (January 15, 1891).

On January 15, a resolution was introduced in the Senate requesting the Secretary of State to report the condition of the pending amendments to the Senate.

[*Senate Journal, Fifty-seventh Session, 114.*]

*Resolved*, That the Secretary of State be required to report at once to the Senate what, if any, action was taken by the last General Assembly in reference to the proposed amendments to the Constitution of Indiana.

#### 419. Secretary of State's Report on Pending Amendments (January 17, 1891).

On January 17, the Secretary of State reported that it appeared that House Joint Resolutions Nos. 9, 11, 13, 14, 15, 16, 18, 19, 21 and 23 had been adopted.

[*Senate Journal, Fifty-seventh Session, 143.*]

Hon. Ira J. Chase, President of the Senate:

Sir—In accordance with Senate resolution just referred to me providing “that the Secretary of State report at once to the Senate what, if any, action was taken by the last General Assembly in reference to the proposed amendments to the Constitution of Indiana,” I have the honor to report that the only evidence filed in my office bearing upon the subject of inquiry is contained in the Journals of the proceedings of the House and Senate respec-

tively of the Fifty-sixth General Assembly of Indiana, prepared by the clerk of the House and secretary of the Senate respectively, and filed by them in my office some weeks after the adjournment of the said General Assembly.

By examination of said Journals, I find that House Joint Resolutions Nos. 9, 11, 13, 14, 15, 16, 18, 19, 21 and 23, appear to have been adopted in the usual form, and are set forth in said Journals in full.

I find by examination of said Journals that on the last day of the session, to-wit, March 11, 1889, the said resolutions were adopted by the said Senate, and the House duly notified of the passage thereof; that on said day to-wit, March 11, 1889, there appears in the said Journal of the House the following entry:

Mr. Beasley made the following motion:

“MR. SPEAKER:

I move that House joint resolutions Nos. 9, 11, 13, 14, 15, 16, 19, 21, 23 and 18, proposing amendments to the Constitution, be ordered enrolled, and that the principal clerk of the House be instructed to file said enrolled joint resolutions in the office of the Secretary of State, to be by him presented to the next General Assembly.”

Which motion prevailed.

House joint resolutions Nos. 17, 21, 23, 18, 16, 9, 13, 11, 15 and 14 were ordered enrolled and filed with the Secretary of State, and referred to the next succeeding General Assembly for further consideration.

I have to report that the requirements of the foregoing resolution were never complied with in this: that if the said joint resolutions were enrolled, they were never reported to the Secretary of State; that said resolutions, nor either of them, were ever filed in the office of the Secretary of State in any form whatever, except as they appear in the said House and Senate Journals as aforesaid.

The said joint resolutions never having been enrolled and filed in my office, I am unable to present them to this (the Fifty-seventh) General Assembly.

All of which is respectfully submitted.

CHARLES F. GRIFFIN,

January 16, 1891.

Secretary of State.

#### 420. Reference of Query to Clerk of House (January 17, 1891).

Immediately after the submission of the foregoing report, the Senate adopted a resolution requesting the clerk of the House of the 56th General



Assembly to report what he had done to comply with the resolution of Mr. Beasley.

[*Senate Journal, Fifty-seventh Session, 145.*]

That the clerk of the House of the Fifty-sixth General Assembly be required to report, forthwith, to this Senate what, if anything, he did looking to the compliance with the resolution of the Hon. Representative Beasley on the last day of that session.

#### 421. Taxation of Earnings of Corporations (March 10, 1891).

After the rejection of the nine pending amendments, the special committee reported four amendments which they had prepared, and which were adopted on March 9. The first of these amendments authorized the General Assembly to provide for the taxation of the net or gross earnings of corporations. The resolution was adopted by a vote of 75-0. The resolution was adopted by the Senate on March 9, by a vote of 41-1, and was filed in the office of the Secretary of State on March 10.

[*Senate Journal, Fifty-seventh Session, 1250.*]

The following is House joint resolution No. 7:

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election:

Amend Section 1 of Article 10 of said Constitution to read as follows:

The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes as may be specially exempted by law: *Provided*, That corporations may be taxed upon their net or gross earnings in such manner as may be prescribed by law.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2.

#### 422. Term of County Officers (March 10, 1891).

The second of the four proposed amendments fixed the term of county officers at four years. It was adopted by the House by a vote of 75-0, and by the Senate, on March 9, by a vote of 41-1. It was filed in the office of the Secretary on March 10.

[*House Journal, Fifty-seventh Session, 1474.*]

House joint resolution No. 8:

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 6, of said Constitution to read as follows:

There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for four years, commencing on the first Monday in January after their election, and no person shall be eligible to hold any of said offices more than four years, or one term in any period of eight years. Provisions shall be made by law for filling vacancies in any of such offices.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4.

#### 423. Term of State Officers (March 10, 1891).

The third amendment fixed the term of State officers at four years. It passed the House by a vote of 75-0 and the Senate, on March 9, by a vote of 41-1, and was filed in the office of Secretary of State on March 10.

[*Senate Journal, Fifty-seventh Session, 1252.*]

The following is House joint resolution No. 9:

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election:

Amend Section 1 of Article 6 of said Constitution to read as follows:

There shall be elected by the voters of the State, a Secretary, an Auditor and a Treasurer of State, who shall severally hold their offices for four years. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than four years in any period of eight years.

*Resolved,* That in submitting this amendment to the electors

of the State to be voted on, it shall be designated as Amendment No. 3.

**424. Duration of Regular Legislative Sessions (March 10, 1891).**

The fourth resolution fixed the maximum duration of a legislative session at 100 days. This resolution was adopted by the House by a vote of 75-0, and by the Senate by a vote of 41-1, and was filed in the office of the Secretary of State on March 10.

[*Senate Journal, Fifty-seventh Session, 1253.*]

House joint resolution No. 10.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same hereby now is agreed to, and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 29 of Article 4 of said Constitution to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of one hundred days, nor any special session beyond the term of forty days.

*Second. Resolved,* That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 1.

**425. Membership of Supreme Court (January 12, 1891).**

On January 12, Senator Thomas E. Boyd, a Republican, introduced the following resolution proposing to increase the membership of the Supreme Court to eleven judges. The resolution was referred to the Committee on Revision of the Constitution, but never reported back.

[*Senate Journal, Fifty-seventh Session, 46.*]

A resolution proposing an amendment to Section 2 of Article 7, of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to Section 2 of Article 7, of the Constitution of the State of Indiana, be and the same is hereby proposed and agreed to, to-wit: Amend said section by striking out the word "five" before the word "judges" therein, and by inserting in lieu of said word so stricken out the word "eleven."

*Be it resolved, further,* In submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

#### 426. Woman Suffrage (February 9, 1891).

One resolution proposing to extend the right of suffrage to women was introduced. On February 18, the Senate adopted a resolution inviting Mrs. Helen Gougar to address the Senate "upon laws affecting the status of women in the State" on February 19. Accordingly, on February 19, Mrs. Gougar delivered an address "on prohibition, municipal suffrage, and other social and political reforms, making a strong appeal to the Senate for the enactment of laws on these subjects." In response to the address, the following resolution was presented by Senator Thomas E. Boyd. Senator Rufus Magee moved to strike out of the resolution the words "Democrat" and "Democratic" where they occur and insert the word "Republican." Both resolution and amendment were rejected.

*[Senate Journal, Fifty-seventh Session, 602.]*

WHEREAS, Mrs. Helen Gougar has done valiant service for the Democratic party during the last six or eight years, thus placing them under obligations to her for labor performed; and,

WHEREAS, The democratic party are the champions of a free and universal ballot, and in favor of the absolute prohibition of the liquor traffic in Indiana; therefore, be it

*Resolved,* That the President appoint a committee of five, all Democrats, to draft resolutions and bills covering all of the recommendations made in Mrs. Gougar's elegant address, and place them upon their passage at once, to the end that we may have statutory women suffrage in all the municipalities of Indiana, and absolute prohibition of the liquor traffic in this State.

Meantime on February 5, the House adopted a resolution setting apart February 19 as "women's day" and inviting Mrs. Helen M. Gougar and others to be present and address the House "in behalf of municipal suffrage for women." On February 9, Mr. Isaac W. Beauchamp, a Democrat, introduced a woman suffrage amendment which was referred to the Judiciary Committee. The resolution was indefinitely postponed.

*[House Journal, Fifty-seventh Session, 599.]*

Joint resolution No. 3 proposing an amendment to Section 2, Article 2, of the Constitution, as amended March 14, 1881.

*Resolved by the House of Representatives, the Senate concurring,* That the following amendment to the Constitution of the State

of Indiana be, and the same is hereby, proposed and agreed to, to-wit: Amend Section 2 of Article 2 to read:

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the six months and in the township sixty days and in the ward or precinct thirty days immediately preceding such election, and every person of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

*Resolved*, That the joint resolution providing an amendment to Section 2, Article 2, of the Constitution, shall be submitted to the electors at the general election of eighteen hundred and ninety-four.

#### THE FIFTY-EIGHTH GENERAL ASSEMBLY (1893).

The 58th session was strongly Democratic. The Senate consisted of 35 Democrats and 15 Republicans, and the House of 63 Democrats and 37 Republicans. Very few constitutional measures were considered, and none were adopted. Four amendments were pending consideration, including House joint resolution No. 7, designated as Amendment No. 2, providing for the taxation of the net or gross earnings of corporations; House joint resolution No. 8, designated as Amendment No. 4, fixing the terms of county officers at four years; House joint resolution No. 9, designated as Amendment No. 3, fixing the terms of State officers at four years; and House joint resolution No. 10, designated as Amendment No. 1, fixing the maximum limit of a regular session of the General Assembly at 100 days. No constitutional amendments conferring the right of suffrage on women were introduced, but the subject was given consideration in a different way. One bill was introduced in the House and two in the Senate conferring on women the right to vote for statutory officers. The House bill No. 540, was introduced by Mr. Reuben Dailey on February 16, and referred to the Committee on Rights and Privileges, but was never reported back to the House. Of the Senate Bills, one, No. 280, was introduced by Senator James M. Seller, by request, on February 2, and was designed "to confer upon women the privilege to vote at all regular



or special elections held in any city, town or village in this State for the election of city, town or village officers, or other municipal purposes, and to hold such offices." The bill was referred to the Committee on Cities and Towns and never reported to the Senate. House bill 540 and Senate bill 280 are apparently identical as they bear the same title. The second of the two Senate bills, No. 367, was introduced by Senator LON W. VAIL. It bears the same title as the two preceding bills. It was referred to the Judiciary Committee and never reported back to the Senate.

**427. Governor Matthews' Attitude toward a Constitutional Convention (January 9, 1893).**

Governor Matthews was a firm believer in the adequacy of the legislative method of amending the Constitution. In his inaugural address, delivered on January 9, he opposed the calling of a constitutional convention because of the expense and the confusion and litigation which would ensue.

*[House Journal, Fifty-eighth Session, 54.]*

These blessings of good government flow largely from our admirable State Constitution, and wise system of laws made in conformity therewith.

This Constitution—and no State has a better one—was framed by a body of eminent statesmen, and was approved by the almost unanimous vote of the people. The experience of over forty years has proven its beneficent character and wisdom, and it wisely provides a plain and intelligent way for amending it, when amendments are necessary, and thus avoid the great expense of a convention, the confusion, and long litigation which always follows the adjustment of the laws of a State to a new Constitution.

Our courts have from time to time passed upon such points as needed construing, and we now have a general code of laws, conceded in the main to be in harmony with the Constitution, and at least equal to the system of government and laws of any other State. In my judgment, if changes are desirable in the Constitution, it would be best to make them in the manner the people have themselves provided in that instrument itself, which we have all sworn to support. But radical changes in either the Constitution or laws of a State should not be made without the maturest deliberation and the gravest consideration.

**428. Status of Pending Amendments—Authorized Inquiry (January 11, 1893).**

On January 11, the House adopted a resolution providing for the appointment of a committee to ascertain the status of the pending constitutional

amendments and on January 13, the Speaker appointed Messrs. Hugh D. McMullen, Joseph F. Suchanek, Allen Swope, Gates Sexton and Arthur C. Lindemuth.

[*House Journal, Fifty-eighth Session, 125.*]

House resolution No. 15.

*Resolved*, That a committee of five be appointed by the Speaker, to which shall be referred the amendments to the Constitution proposed and agreed to by the 57th General Assembly, and by the 57th General Assembly referred to this the 58th General Assembly, and that the said committee be and is hereby instructed to report to the House such recommendations as the committee shall deem right and proper in the premises, to the end that the said amendments may be at the earliest possible moment brought before the House for action thereon.

**429. Report of Committee on Pending Amendments (February 13, 1893).**

The committee submitted its report on February 13. They were of the opinion that four amendments had been adopted by the 57th General Assembly and submitted to the 58th General Assembly for its consideration, and these amendments were submitted to the House for adoption or rejection.

[*House Journal, Fifty-eighth Session, 648.*]

Your committee appointed to examine and report to the House the status of the constitutional amendments proposed to and adopted by the Fifty-seventh General Assembly, and to make such recommendations to the House as might seem to your committee right and proper in the premises, beg leave to submit to the House the following report:

We find upon examination that the Fifty-seventh General Assembly of the State of Indiana agreed to the following proposed amendments to the Constitution, viz.:

House joint resolution No. 7, filed in the office of the Secretary of State March 10, 1891; *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 1 of Article 10 of said Constitution to read as follows:

The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all

property, both real and personal, excepting only such for municipal, educational, literary, scientific, religious or charitable purposes as may be specially exempted by law: *Provided*, That corporations may be taxed upon their net or gross earnings in such manner as may be prescribed by law.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2; also

House joint resolution No. 8, filed in the Office of the Secretary of State, March 10, 1891,

*Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is here now agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 6 of said Constitution to read as follows:

There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, commencing on the first Monday in January after their election, and no person shall be eligible to hold any of said offices more than four years, or one term, in any period of eight years. Provisions shall be made by law for filling vacancies in any of such offices.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4; also,

House joint resolution No. 9, filed in the office of the Secretary of State, March 10, 1891:

*Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State, be and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election.

Amend Section 1 of Article 6 of said Constitution to read as follows: There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their office for four years. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than four years in any period of eight years.

*Resolved*, That in submitting this amendment to the electors

of the State to be voted on, it shall be designated as amendment No. 3, and

House joint resolution No. 10, filed in the office of the Secretary of State, March 10, 1891.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State, be and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 29 of Article 4 of said Constitution to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of one hundred days, nor any special session beyond the term of forty days.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

And we find that the same were, by the Fifty-seventh General Assembly, referred to the Fifty-eighth General Assembly; and we find that the said proposed constitutional amendments were so agreed to and referred by joint resolution, duly entered upon the Journals of the House and Senate respectively, together with the yeas and nays of the vote taken on the adoption of the said joint resolutions severally, and we therefore report to this House for its adoption or rejection, the following preambles and resolutions.

H. D. McMULLEN,  
A. C. LINDEMUTH,  
GATES SEXTON,  
JOSEPH F. SUCHANEK,  
ALLEN SWOPE.

#### 430. Taxation of Corporate Earnings (February 13, 1893).

Immediately after the submission of the foregoing report, the resolutions were taken up separately for consideration. The joint resolution proposing an amendment authorizing the General Assembly to tax the net or gross earnings of corporations, was adopted by the House by a vote of 87-1. On February 14, the resolution was reported to the Senate and referred to the Committee on Revision of the Constitution. On February 22, the committee made a favorable report. On February 23, the Senate rejected the amendment by a vote of 16-30.



[*House Journal, Fifty-eighth Session, 651.*]

House joint resolution No. 5, being the same as Joint resolution No. 7, of 1891:

WHEREAS, The Fifty-seventh General Assembly did, by a majority of all of its members elected to each of the two houses, agree to the following amendment to the Constitution of the State of Indiana, viz.:

House joint resolution No. 7, filed in the office of the Secretary of State March 10, 1891.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State, be and the same is here now agreed to and referred to the General Assembly of said State, to be chosen at the next general election. Amend Section 1 of Article 10 of said Constitution to read as follows:

The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting only such for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law: *Provided*, That corporations may be taxed upon their net or gross earnings in such manner as may be prescribed by law.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 2; and,

WHEREAS, The said amendment was entered upon the Journals of the House and Senate, respectively, together with the yeas and nays thereon; and,

WHEREAS, Said Fifty-seventh General Assembly referred said amendment to this, the Fifty-eighth General Assembly, chosen at the next following general election after the aforesaid adoption and reference; and,

WHEREAS, In the judgment of your committee, the said amendment should be adopted; therefore, be it

*Resolved by the House, the Senate concurring*, That the said amendment be and the same is hereby agreed to.

H. D. McMULLEN,  
A. C. LINDEMUTH,  
GATES SEXTON,  
JOSEPH F. SUCHANEK,  
ALLEN SWOPE.



**431. Fixing Length of Regular Sessions of General Assembly at 100 Days (February 13, 1893).**

The second resolution considered fixed the duration of a regular session at 100 days. The resolution was adopted by the House by a vote of 53-40, and referred to the Senate on February 14. On February 22, the Committee on Revision of the Constitution to whom the resolution had been referred, reported favorably, and on February 23, the resolution passed the Senate by a vote of 38-7. Later the same day the Senate agreed to reconsider the vote on this resolution and on February 25, the resolution was rejected by a vote of 19-20.

*[Senate Journal, Fifty-eighth Session, 521.]*

The following is House joint resolution No. 4.

WHEREAS, The Fifty-seventh General Assembly did, by a majority of all members elected to each of the two houses, agree to the following amendment to the Constitution of the State of Indiana, viz.:

House joint resolution No. 10, filed in the office of the Secretary of State, March 10, 1891.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 29 of Article 4 of said Constitution to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such measure may be made. No session of the General Assembly shall extend beyond the term of one hundred days, nor any special session beyond the term of forty days.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as amendment No. 1; and,

WHEREAS, The said amendment was entered upon the journals of the House and Senate respectively, together with the yeas and nays thereon, and

WHEREAS, Said Fifty-seventh General Assembly referred said amendment to this, the Fifty-eighth General Assembly, the Fifty-eighth General Assembly being the General Assembly chosen at the next following general election after the aforesaid adoption and reference; therefore, be it

*Resolved by the House, the Senate concurring,* That the said amendment be and the same is hereby agreed to.

H. D. McMULLEN,  
GATES SEXTON,  
JOSEPH F. SUCHANEK,  
A. C. LINDEMUTH,  
ALLEN SWOPE.

**432. Terms of County Officers (February 13, 1893).**

The third resolution was designed to fix the terms of county officers at four years. This resolution was rejected by the House by a vote of 8-86, and indefinitely postponed by the Senate on February 23.

*[House Journal, Fifty-eighth Session, 655.]*

House joint resolution No. 7, a proposed amendment to the Constitution being the same as Joint resolution No. 8 of 1891.

WHEREAS, The Fifty-seventh General Assembly did, by a majority of all the members elected to each of the two houses, agree to the following amendment of the Constitution of the State of Indiana, viz.:

House joint resolution No. 8, filed in the office of the Secretary of State March 10, 1891.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 6 of said Constitution to read as follows:

There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their office for four years, commencing on the first Monday in January after their election, and no person shall be eligible to hold any of said offices more than four years or one term in any period of eight years. Provisions shall be made by law for filling vacancies in any of such offices.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 4; and

WHEREAS, The said amendment was entered upon the Journals of the House and Senate respectively, together with the yeas and nays thereon; and

WHEREAS, Said Fifty-seventh General Assembly referred said

amendment to this, the Fifty-eighth General Assembly, the Fifty-eighth General Assembly being the General Assembly chosen at the next following general election after the aforesaid adoption and reference; and

WHEREAS, In the judgment of your committee, the said amendment should be adopted; therefore, be it

*Resolved by the House, the Senate concurring,* That the said amendment be and the same is hereby agreed to.

H. D. McMULLEN,  
GATES SEXTON,  
JOSEPH F. SUCHANEK,  
A. C. LINDEMUTH,  
ALLEN SWOPE.

#### 433. Terms of State Officers (February 13, 1893).

The fourth resolution fixed the terms of State officers at four years. It was rejected by the House by a vote of 8-80 and indefinitely postponed by the Senate on February 23.

*[House Journal, Fifty-eighth Session, 657.]*

House joint resolution No. 6, being a proposed amendment to the Constitution, being the same as Joint resolution No. 9 of 1891.

WHEREAS, The Fifty-seventh General Assembly did, by a majority of all members elected to each of the two houses, agree to the following amendment to the Constitution of the State of Indiana:

House joint resolution No. 9, filed in the office of the Secretary of State, March 10, 1891.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 1 of Article 6 of said Constitution to read as follows:

There shall be elected by the voters of the State, a Secretary, an Auditor and a Treasurer of State, who shall severally hold their office for four years. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than four years in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 3; and,

WHEREAS, The said amendment was entered upon the Journals

of the House and Senate respectively, together with the ye and nay vote thereon; and,

WHEREAS, The said Fifty-seventh General Assembly referred said amendment to this, the Fifty-eighth General Assembly, the Fifty-eighth General Assembly being the General Assembly chosen at the next following general election after the aforesaid adoption and reference; and,

WHEREAS, In the judgment of your committee the said amendment should be adopted; therefore, be it

*Resolved by the House, the Senate concurring,* That the said amendment be, and the same is, hereby agreed to.

H. D. McMULLEN,  
A. C. LINDEMUTH,  
GATES SEXTON,  
JOSEPH F. SUCHANEK,  
ALLEN SWOPE.

#### 434. Term of Prosecuting Attorney (January 19, 1893).

On January 19, Senator John W. Kern introduced a resolution fixing the term of prosecuting attorney at four years. The resolution was referred to the Committee on Revision of the Constitution. On February 7, the committee recommended that the resolution be indefinitely postponed "for the reason that there are now amendments proposed and pending, and the Constitution provides that none shall be proposed while some are pending." The report was concurred in by the Senate.

[*Senate Journal, Fifty-eighth Session, 214.*]

Senate joint resolution No. 3.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is, agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 11 of Article 7 of said Constitution to read as follows:

There shall be elected in each judicial circuit, by the voters thereof, at the time of holding general elections, a Prosecuting Attorney, who shall hold his office for four years, commencing on the first Monday in January after his election, and no person shall be eligible to hold said office more than four years or one term in any period of eight years.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. —.

**435. Amendment of Constitution (January 11, 1893).**

On January 11, Mr. John Higbee, by request, introduced a bill in the House to amend the Constitution, which was referred to the Committee on Organization of Courts. On February 7, the committee recommended that the bill be indefinitely postponed, and the report was concurred in.

*[House Journal, Fifty-eighth Session, 130.]*

House bill No. 75. A bill for an act to amend the Constitution of Indiana.

**436. Constitutional Investigation (March 6, 1893).**

On March 6, the last day of the session, a resolution was introduced in the House by Mr. Hugh D. McMullen providing for the appointment of a committee of three Senators and three Representatives, to examine the provisions of modern constitutions and report the results of their investigations to the General Assembly of 1895. The House adopted the resolution, but the Senate rejected it by a vote of 4-40.

*[House Journal, Fifty-eighth Session, 1197.]*

House Concurrent resolution No. 21.

WHEREAS, By the overthrow of the apportionment made by the legislature of 1891 the Supreme Court has encroached on what has heretofore been conceded to be the domain of the legislature, and in so doing has left no rule or method by which the legality of an apportionment can be decided other than the opinion of said Court; and

WHEREAS, The Supreme Court has by other decisions unsettled the former rules governing the appointing power, and in so doing has made it necessary that the appointing power should be definitely and permanently fixed by the Constitution; and

WHEREAS, The Supreme Court has by the overthrow of two registration laws, made it manifest that no just and effective system of registration can be adopted under the present Constitution, and it is believed that there are many other defects in the Constitution; and

WHEREAS, No amendment to the Constitution can be now offered on account of pending amendments, and no call for a constitutional convention should be hastily or inconsiderately made; therefore, be it

*Resolved*, That a committee of six be appointed, three by the President of the Senate and three by the Speaker of the House, of whom two shall be senators, two representatives, and two not members of the General Assembly, and said committee shall be



charged to examine fully into all claimed defects of the Constitution, to examine the provisions of more modern Constitutions of other States, and to report to the legislature of 1895 the result of their investigations, together with their recommendations thereon.

### THE FIFTY-NINTH GENERAL ASSEMBLY (1895).

In 1895 the Republicans had returned to power. The Senate consisted of 30 Republicans and 20 Democrats, and the House of 81 Republicans and 19 Democrats. No constitutional amendments were pending, but a rather large number of constitutional measures were considered. Only two amendments were adopted. One of these increased the membership of the Supreme Court, and permitted the court to sit in divisions or in banc, and the other permitted the use of voting machines. The amendments proposed and rejected provided for the election of supreme judges by districts instead of by the State at large, proposed that amendments to the Constitution adopted by one General Assembly might be submitted directly to the people, increased the residence qualifications of voters, provided a rather complicated method of distributing senators and representatives, authorized the passage of local laws to reimburse public officers who had lost public funds through no fault of their own, fixed the terms of State and county officers at four years, and extended the right of suffrage to women. Two unsuccessful attempts were also made to provide for the calling of a constitutional convention. Prior to and during the session, the electorate of the State displayed an unusual interest in the suppression or control of the liquor traffic. The most important temperance measure enacted was the famous Nicholson Law which was approved on March 11, 1895. During the pendency of this measure, scores of petitions were presented in both Houses demanding the passage of this law. An equally insistent demand was made for instruction in the public schools as to the effects of alcoholic drinks and narcotics on the human system, and such an act was passed and approved on March 14. So far as the writer is aware, only one petition was presented asking for a constitutional amendment controlling the liquor traffic. This petition was presented in the House on January 30; it emanated from Decatur county and asked the General Assembly to amend the Constitution, so as to prohibit the sale, manufacture and importation of intoxicating liquors.

#### 437. Membership of Supreme Court (January 15, 1895).

The amendment designed to increase the membership of the Supreme Court was introduced in the Senate on January 15 by Mr. James O'Brien, a Republican, and was referred to the Committee on Revision of the Constitution. On January 29, the committee reported favorably and the report was concurred in. On March 2, the resolution was referred to the same committee with instructions to make certain amendments. The resolution as originally introduced was as follows:

#### ORIGINAL SUPREME COURT MEMBERSHIP RESOLUTION.

*[Senate Journal, Fifty-ninth Session, 106.]*

A joint resolution No. 1, to amend Section 2 of Article 7 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State, be, and the same is now agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 7 of said Constitution to read as follows:

The Supreme Court shall consist of not less than nine nor more than fifteen judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well.

*Resolved,* That in submitting the amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

SUPREME COURT MEMBERSHIP RESOLUTION AS REPORTED BY  
COMMITTEE.

On March 4, the committee reported the resolution in an amended form fixing the membership of the court and authorizing the court to sit in divisions or in banc.

*[Senate Journal, Fifty-ninth Session, 836.]*

Your Committee on Revision of the Constitution, to which was recommitted Senate joint resolution No. 1, introduced by Senator O'Brien, begs leave to report the same back to the Senate, with the recommendation that said joint resolution be amended as follows:

Strike out the following words: "Section 2. The Supreme Court shall consist of not less than nine nor more than fifteen judges, a majority of whom shall form a quorum. They shall hold their offices for six years if they so long behave well," being lines 6, 7 and 8 in said joint resolution, and insert the following: Sec. 2. The Supreme Court shall consist of not less than seven nor more than sixteen Judges, but the number must be seven, ten, thirteen or sixteen. The court may sit in division or in banc, and shall always be open for the transaction of business. When the number of judges is seven, there shall be two divisions, denominated divisions one and two, respectively; and when there are ten judges, there shall be three divisions, denominated divisions one, two and three, respectively; and when there are thirteen judges there shall be four divisions, denominated divisions one, two, three, and four, respectively; and when there are sixteen judges there shall be five divisions, denominated divisions one, two, three, four and five, respectively.

The judges shall, on the first day of each term of court, elect one of their number Chief Justice, who shall act as such for said term.

The Chief Justice shall, on his election, assign three judges to each division, and such assignment may be changed by him from time to time: *Provided, however,* That no two of the judges shall sit in the same division more than one term of court in any period of two years. The Chief Justice shall be a member of each division, and the presiding judge thereof, when present. The judges shall be competent to sit in either division and may interchange with each other by order of the Chief Justice. When a judge in any division is absent or incompetent, or declines to sit for any cause, a judge from one of the other divisions shall sit in said cause. Each of the divisions shall have jurisdiction to hear and determine the causes, and all questions arising therein, subject to the provisions hereinafter contained in relation to the court in banc. The presence of three judges shall be necessary to the transaction of any business in either division, except such as may be done at chambers, and the concurrence of three judges shall be necessary to pronounce judgment in any division.

The Chief Justice shall apportion the business of the several divisions. Any four of the judges may order any cause pending before the court in banc. This order may be made before or after judgment, pronounced by a division, but the order, if not made after judgment is pronounced, must be made within sixty days from the date of filing the opinion in the cause, and if so made shall vacate and set aside the judgment. No judgment shall be final until the expiration of sixty days from the filing of the opinion in the cause, within which time the same may be vacated or set aside, and a rehearing may be granted at any time: *Provided,* A petition therefor be filed by some person who is a party within sixty days after the opinion in said cause is filed. The Chief Justice or any four of the Judges may convene the court in banc at any time, and the Chief Justice shall be the presiding Judge of the Court when so convened. A majority of the Judges shall constitute a quorum when sitting in banc, and a concurrence of a majority of all the Judges of the Court shall be necessary to pronounce judgment in banc.

The Judges assigned to each division shall, at the first meeting after their assignment to their respective divisions, select one of their number as Presiding Judge, who shall preside in such divisions when the Chief Justice is not present.

All cases in which the constitutionality of a statute, Federal or State, is in question, and such question is duly presented, the jurisdiction shall be in the court in banc, and shall not be determined in a division.

Each Judge elected shall hold his office for the term of six years, if he so long behaves well, and each Judge of said Court in office at the date of the taking effect of this section shall continue in office until the expiration of the term for which they were respectively elected or appointed.

And that Section 3, of Article 7, be amended to read as follows, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election, viz.:

Sec. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court, and such districts shall be formed of contiguous territory as nearly equal in population as without dividing a county, the same can be made. One of said Judges shall be elected by each district, and shall reside therein. And when so amended that the same do pass.

O. A. BAKER,  
Chairman.

The resolution as reported was then passed by a vote of 37-3, and was transmitted to the House on March 9 and passed on March 11 by a vote of 70-2.

[*House Journal, Fifty-ninth Session, 1853.*]

Engrossed Senate joint resolution No. 1 to amend Section 2 of Article 7 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendments to the Constitution of said State be and the same is now agreed to, and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 of Article 7 of said Constitution to read as follows:

Sec. 2. The Supreme Court shall consist of not less than seven nor more than sixteen Judges, but the number must be seven, ten, thirteen or sixteen. The Court may sit in division or in banc, and shall always be open for the transaction of business. When the number of Judges is seven there shall be two divisions, denominated divisions one and two, respectively. And when there are sixteen Judges there shall be five divisions, denominated one, two, three, four and five, respectively. The Judges shall, on the first



day of each term of Court, elect one of their number Chief Justice, who shall act as such for said term.

The Chief Justice shall, on his election, assign three Judges to each division, and such assignment may be changed by him from time to time: *Provided, however,* That no two of the Judges shall sit in the same division more than one term of court in any period of two years.

The Chief Justice shall be a member of each division, and the presiding Judge thereof when present.

The Judges shall be competent to sit in either division, and may interchange with each other by order of the Chief Justice.

When a Judge in any division is absent or incompetent, or declines to sit for any cause, a Judge from one of the other divisions shall sit in said cause.

Each of the divisions shall have jurisdiction to hear and determine the causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in banc.

The presence of three Judges shall be necessary to the transaction of any business in either division, except such as may be done at chambers, and the concurrence of three Judges shall be necessary to pronounce judgment in any division.

The Chief Justice shall apportion the business of the several divisions. Any four of the Judges may order any cause pending before the Court to be heard and decided by the Court in banc.

This order may be made before or after judgment is pronounced by a division, but the order, if made after judgment is pronounced, must be made within sixty days from the date of filing the opinion in the cause, and if so made shall vacate and set aside the judgment.

No judgment shall be final until the expiration of sixty days from the filing of the opinion in the case, within which time the same may be vacated or set aside, and a rehearing may be granted at any time: *Provided,* A petition therefor be filed by some person who is a party, within sixty days after the opinion in said cause is filed.

The Chief Justice, or any four of the Judges, may convene the Court in banc, at any time, and the chief Presiding Judge of the Court when convened.

A majority of the Judges shall constitute a quorum when sitting in banc, and a concurrence of a majority of all the Judges of the Court shall be necessary to pronounce judgment in banc.



The Judges assigned to each division shall, at the first meeting after the assignment to their respective divisions, select one of their number as Presiding Judge, who shall preside in such divisions when the Chief Justice is not present.

All cases in which the constitutionality of a statute, Federal or State, is in question, and such question is duly presented, the jurisdiction shall be in the court in banc, and shall not be determined in division.

Each Judge elected shall hold his office for the term of six years, if he so long behaves well, and each Judge of said court, in office, at the date of the taking effect of this section, shall continue in office until the expiration of the term for which they were respectively elected or appointed.

And that Section 3 of Article 7 be amended to read as follows: And the same is now agreed to, and referred to the General Assembly of the State to be chosen at the next general election, viz.: Sec. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court, and such districts shall be formed of contiguous territory as nearly equal in population as, without dividing a county, the same can be made. One of said Judges shall be elected by each district, and shall reside therein.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

#### **438. Voting Machines (January 11, 1895).**

The question of the use of voting machines was becoming insistent, and was under consideration by both Houses. On February 22 Senator Charles E. Shiveley, by request, introduced a bill, No. 452, providing for the appointment of a joint committee of the Senate and House to inquire into the advisability of adopting voting machines to be used at all elections. This bill was referred to the Committee on Elections and never reported back. A week later, on March 1, Mr. John McGregor introduced House bill No. 644 entitled "An act to provide for the greater purity of elections, for the casting and registering of ballots by the Turner voting machine, repealing all laws in conflict therewith, and declaring an emergency." The bill was referred to the Committee on Machine Voting who recommended indefinite postponement on March 11. Meantime on January 11, Mr. George B. Cardwill, a Republican, proposed an amendment to the Constitution permitting the use of voting machines at regular elections. The resolution was referred to the Judiciary Committee, who made a favorable report on January 29. On February 18, the resolution passed the House by a vote of 71-5. On February 19, the Senate referred the resolution to the Committee on Revision of the Con-

stitution. On February 28, the committee recommended indefinite postponement. The Senate, by a vote of 19-19, refused to concur in the report; and the resolution then failed of adoption by a vote of 25-14, for want of a constitutional majority. On March 11, the resolution came up for consideration again and was adopted by a vote of 26-8.

[*Senate Journal, Fifty-ninth Session, 1060.*]

House joint resolution No. 3. A joint resolution of the Senate and House of Representatives of the State of Indiana, to amend Section 13 of Article 2 of the Constitution of the State of Indiana concerning elections, and the manner and method of voting and balloting thereat, and to secure and preserve the secrecy of all such ballots, and prescribing the method of elections by either branch of the General Assembly.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is now hereby agreed to, and referred to the General Assembly of said State to be chosen at the next general election, to wit: Amend Section 13 of Article 2 of said Constitution to read as follows:

All elections by the voters shall be by ballot or by such other method as may be prescribed by law: *Provided*, That the secrecy in voting be preserved: *And, provided*, That all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

Sec. 2. *Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

#### 439. Method of Amending Constitution (January 25, 1895).

The method of amending the Constitution had proved obstructive and unworkable owing to the fact that proposed amendments must pass two succeeding sessions of the General Assembly before they were submitted to the people. On January 25, Senator John W. Kern, by request, introduced a resolution proposing an amendment to the Constitution by virtue of which an amendment which had passed both houses of one General Assembly by a majority vote might be submitted directly to the people for ratification. The resolution was referred to the Committee on Revision of the Constitution. On February 28, the committee recommended that the resolution be indefinitely postponed and the report was concurred in by a vote of 22-18.

[*Senate Journal, Fifty-ninth Session, 202.*]

Joint resolution No. 4. A joint resolution proposing an amendment to Section 1 of Article 16 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State

of Indiana be and the same is hereby proposed and agreed to, to-wit:

Section 1. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the ayes and noes thereon, be entered on their journals, and thereupon such General Assembly shall provide for the submission of such amendment or amendments to the electors of the State at a special, or the next succeeding general election, and if a majority of said electors shall ratify the same such amendment or amendments shall become a part of this Constitution.

*Resolved, further,* That in voting on this amendment it shall be designated and known as Amendment No. —.

#### 440. Suffrage Qualifications of Aliens (January 14, 1895).

On January 14, Mr. Jerome Dinwiddie, a Republican, introduced a resolution in the House proposing to amend the suffrage section of the Constitution so as to require aliens to reside in the United States five years and to be fully naturalized before acquiring the right to vote. The resolution was referred to the Committee on Elections; on January 18 the resolution was reported back to the House with the recommendation that it be referred to the Judiciary Committee, which was done. On February 1, the committee reported favorably. On February 18, the resolution passed the House by a vote of 67-11. On February 19, the resolution was reported to the Senate and referred to the Committee on Revision of the Constitution. On February 28, the committee submitted a favorable report, but on March 11, the resolution was rejected by a vote of 13-21.

[*Senate Journal, Fifty-ninth Session, 544.*]

Engrossed House joint resolution No 1. A resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and is here now agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 2 of said Constitution to read as follows:

In all elections not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in this State during the six months and in the township sixty days and in the ward or pre-

cinct thirty days immediately preceding such election, and every male citizen of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States five years and conformed to naturalization laws of the United States, and has by the proper courts been admitted to full citizenship and is now a citizen of the United States, with the same residence qualifications as other citizens of this State, shall be entitled to vote in the township or precinct wherein he may reside.

**441. Number and Apportionment of Members of General Assembly (January 15, 1895).**

Mr. George B. Cardwill introduced a resolution in the House on January 15, fixing the membership of the Senate at 60, chosen from twenty senatorial districts, and apportioning the representatives among the counties on the basis of population. The resolution was referred to the Committee on Legislative Apportionment and reported favorably on February 25. On March 5, the resolution was read a second time, ordered engrossed but advanced no further.

*[House Journal, Fifty-ninth Session, 110.]*

House joint resolution No. 2, entitled: A joint resolution to amend Sections 2, 3, 4, 5 and 6 of Article 6 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the State of Indiana be, and the same is now hereby, agreed to and referred to the General Assembly of the State to be chosen at the next general election, to-wit: Amend Sections 2, 3, 4, 5 and 6 of Article 4 of said Constitution to read as follows:

The Senate of the State of Indiana shall consist of sixty members, to be chosen from twenty senatorial districts by the qualified voters of said districts, these senators to be chosen from each district in such a manner that not more than two senators from any district shall belong to the party being in the majority in said district.

The General Assembly of the State of Indiana elected at the time this amendment to the Constitution is adopted by the voters of said State, shall divide the State into twenty senatorial districts of as compact and contiguous territory, and as nearly equal population as is possible without dividing any county in the State, and shall also divide said senatorial districts into two classes of ten districts each, the senators from the first class to be elected for two years only, at the first general election succeeding such division, and for four years at the following election. The senators



from the second class to be elected for four years at the first general election succeeding such division into classes. All senators except those elected for two years at the first general election held after said division into classes, to hold office for four years.

2. The House of Representatives of the State of Indiana shall consist of one member from each county in the State having a population not exceeding twenty-five thousand, two members from each county having a population exceeding twenty-five thousand and not exceeding fifty thousand, three members from each county having a population exceeding fifty thousand and not exceeding seventy-five thousand, four members from each county having a population exceeding seventy-five thousand and not exceeding one hundred thousand, five members from each county having a population exceeding one hundred thousand and not exceeding one hundred and twenty-five thousand, six members from each county having a population exceeding one hundred and twenty-five thousand and not exceeding one hundred and fifty thousand. The population in each case to be ascertained from the last preceding decennial census of the United States.

The General Assembly is instructed to re-arrange the number of members of the House of Representatives to which each county is entitled, as provided herein, at its regular session immediately following the taking of the regular decennial census by the United States.

No counties are to be united or none divided in arranging the membership of the House of Representatives.

#### **442. Local Laws Reimbursing Public Officials (January 16, 1895).**

On January 16, Mr. Andrew J. Stakebake, a Republican, proposed an amendment to the Constitution prohibiting the General Assembly from passing local laws reimbursing public officers who had loaned, deposited, or misapplied and lost public money. The resolution was referred to the Judiciary Committee, reported favorably on January 29, and passed on February 18, by a vote of 64-8. On February 19, the resolution was reported to the Senate and referred to the Committee on Revision of the Constitution, and reported favorably on February 28, but no further action was taken.

*[House Journal, Fifty-ninth Session, 407.]*

House joint resolution No. 5.

*Be it resolved by the General Assembly of the State of Indiana,*  
That the following proposed amendment to the Constitution of the State be, and the same is here now agreed to, and referred



to the General Assembly of the State, to be chosen at the next general election. Amend Section 22 of Article 4 of the Constitution to read as follows:

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: Regulating the jurisdiction and duties of justices of the peace and of constables; For the punishment of crimes and misdemeanors; Regulating the practice in courts of justice; Providing for changing the venue in civil and criminal cases; Granting divorces; Changing the names of persons; For laying out, opening and working on highways, and for the election or appointment of supervisors; Vacating roads, town plats, streets, alleys and public squares; Summoning and impaneling grand and petit juries and providing for their compensation; Regulating county and township business; Regulating the election of county and township officers and their compensation; For the assessment and collection of taxes for State, county, township or road purposes; Providing for supporting common schools, and for the preservation of school funds; In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required; In relation to interest on money; Providing for the opening and conducting elections of State, county or township officers, and designating the places of voting; Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities by executors, administrators, guardians or trustees; Providing for the reimbursement of county, township or municipal officers who have loaned, deposited or misapplied and lost public moneys or other property held in a fiduciary capacity; Or for the relief of any county, township or municipal officers from liability upon their official bonds.

#### 443. Tenure of State and County Officers (January 25, 1895).

The tenure of office amendment, frequently considered before, applying to both State and county officers, was introduced in the House on January 25, by A. R. Howe, a Republican, and referred to the Judiciary Committee. On February 1, the resolution was indefinitely postponed.

*[House Journal, Fifty-ninth Session, 280.]*

House joint resolution No. 7, entitled: A joint resolution to amend Sections 1 and 2 of Article 6 of the Constitution of the State of Indiana.

WHEREAS, Believing it to be expedient for a wise and economical administration of the administrative and executive depart-

ments of the State and county, and believing that justice demands that State and county affairs should be equalized by tenure of office; therefore,

*Be it resolved by the General Assembly of the State of Indiana,* That Sections 1 and 2 of Article 6 be amended to read as follows:

Section 1. There shall be elected by the voters of the State a Secretary, an Auditor, a Treasurer of State, Attorney-General and State Superintendent of Public Instruction, who shall severally hold their offices for four years.

They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than four years in a period of eight years.

Sec. 2. There shall be elected in each county, by the qualified voters thereof, at the time of holding general elections, a clerk of the circuit court, an auditor, a recorder, a treasurer, a sheriff, a coroner and a surveyor. And no person shall be eligible to any office by election more than four years in any period of eight years.

#### 444. Woman Suffrage and Alien Voters (February 22, 1895).

On February 22, Mr. George B. Cardwill proposed an amendment to the Constitution conferring the right of suffrage on women, and requiring aliens to reside in the United States five years, and to be fully naturalized before acquiring the right to vote. The resolution was referred to the Judiciary Committee and no further action was had.

*[House Journal, Fifty-ninth Session, 865.]*

A joint resolution providing for the amendment of Section 2 of Article 2 of the Constitution of the State of Indiana.

*Be it resolved by the General Assembly of the State of Indiana,* That Section 2 of Article 2 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every person of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States five years and who shall have resided in this State during the six months, and in the township sixty days, in the ward or precinct thirty days immediately preceding such election, and shall become a citizen of the United States conformably to the laws of the

United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside.

#### 445. Constitutional Convention.

Two attempts were made to provide for the calling of a constitutional convention. Both measures were introduced in the House. On January 15, Mr. A. R. Howe presented a resolution providing for the appointment of a joint committee of five senators and five representatives, to formulate a call for a constitutional convention, to be submitted to the voters at the next general election. The resolution was referred to the Judiciary Committee, reported adversely on January 22, and indefinitely postponed.

COMMITTEE ON CONSTITUTIONAL CONVENTION (JANUARY 15, 1895).

[*House Journal, Fifty-ninth Session, 216.*]

House joint resolution No. 6, entitled, A joint resolution for the appointment of a committee to take into consideration the propriety of calling a constitutional convention, as follows:

WHEREAS, Many of the provisions of the Constitution of the State of Indiana, adopted at a delegate convention held at the city of Indianapolis on the tenth day of February, 1851, to alter, revise and amend the Constitution of the State of Indiana, ratified and ordained as the Constitution for the State of Indiana, by the General Assembly of the State of Indiana in general session in the year of our Lord one thousand eight hundred and fifty-two (1852), has in a measure become obsolete by reason of amendments added thereto; and,

WHEREAS, Many new offices have been created by reason of the great increased and advancing strides in the industrial developments of our State, and the increased demands of our State educational, benevolent, reformatory and penal institutions, and realizing that the time has come in the history of our commonwealth of the great State of Indiana, that all the institutions under the care and supervision of the State, should be eliminated from party politics, provision should be made in the Constitution for the government and control of all these institutions, keeping them under wise, honest, capable and economic administration, and,

WHEREAS, It is necessary and expedient for good and honest government in the affairs of State and county administrations, that all State and county officers in the ministerial and executive departments be extended to a term of four years in a period of eight years, and,

WHEREAS, The increased demand for inspection, examination and investigation of the State institutions, and the provisions to be

made for the State in general, have become so extensive that the time allotted for action thereon by the General Assembly, as provided by the Constitution, is becoming too short for wise and economical legislation, therefore,

*Be it resolved by the General Assembly of the State of Indiana,* That a joint committee be appointed, consisting of five members from the Senate and five from the House, who shall jointly formulate and draft a call for a State constitutional convention, to be submitted to the voters of the State of Indiana, at the next general election, and that the committee report thereon not later than the first Monday in February, eighteen hundred and ninety-five.

SUBMISSION OF QUESTION OF CALLING CONSTITUTIONAL CONVENTION IN 1897 (FEBRUARY 16, 1895).

A month later, on February 16, Mr. Woodfin D. Robinson, a Republican, introduced a resolution in the House which is substantially like the resolution of Mr. Howe. The resolution was referred to the Judiciary Committee, reported favorably on February 23, and concurred in, advanced to engrossment on March 2, and not subsequently acted upon.

[*House Journal, Fifty-ninth Session, 718.*]

House joint resolution No. 8, entitled: A joint resolution concerning a constitutional convention.

WHEREAS, Forty-four years have passed since the present Constitution was adopted, and within that time not only has a great civil war brought forth a new era of thought and progress, but a tremendous material development has created new conditions of industrial, commercial, social and political life; and,

WHEREAS, The State has outgrown its present fundamental code of law in far greater measure than it had the former one, which had been in operation thirty-five years at the time of the adoption of this; and,

WHEREAS, The existing Constitution is faulty in its deviation from the time honored and cherished form of the National Constitution, giving the Executive a two-thirds veto power, and in its further failure to impose upon the appointing power its responsibilities; and,

WHEREAS, It makes impossible the realization of certain approved reforms in methods of voting and in municipal government; therefore,

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That notwithstanding the present Constitution pro-



vides no method or stated time for a convention to construct a new Constitution, it is still true that the sovereign power resides in the people of the State, and it is the sense of this General Assembly, that at the next ensuing general election, the question of a convention for the purpose of providing a new Constitution, shall be submitted to the voters of the State, and if a majority of the people decide that a new Constitution shall be provided, then it shall be the duty of the next General Assembly to provide laws for the election and government of such convention.

#### NECESSITY FOR CONSTITUTIONAL CONVENTION (MARCH 11, 1895).

On March 11, the last day of the session, on motion of Senator Thomas E. Boyd, the Senate adopted a resolution declaring its belief that the Constitution was outgrown and should be revised.

*[Senate Journal, Fifty-ninth Session, 1105.]*

*Be it resolved,* That it is the sense of this Senate that the necessary steps should be taken to change the Constitution, to the end that more time should be given the General Assembly of Indiana to transact the business of the State; that the great State of Indiana has in all her great commercial interests outgrown our Constitution, now more than forty years old, and that the business of the State can not and does not receive proper consideration in sixty days.

#### THE SIXTIETH GENERAL ASSEMBLY (1897).

The Republicans still maintained a working majority in the 60th session of 1897. There were 33 Republicans, 14 Democrats and 3 Populists in the Senate, and 52 Republicans, 39 Democrats and 9 Populists in the House. There were two amendments pending: One fixed the membership of the Supreme Court and authorized the court to sit in divisions or in banc; the other amendment permitted the use of voting machines in regular elections. Neither of these amendments was adopted. Two amendments were adopted; one fixed the membership of the Supreme Court at from five to eleven judges, and the other authorized the General Assembly to prescribe the qualifications for the practice of law. The amendments proposed and rejected provided for the initiative and the referendum, fixed the membership of the Senate at 25, and of the House at 50, and fixed the terms of county officers. The question of the purity of elections was considered and acted upon. One bill, Senate 102, was introduced providing for the registration of voters, but it failed of passage. Three bills were introduced designed to authorize the use of voting machines. One of these measures, Senate bill No. 293, was intended to permit the use of voting machines at all regular elections; a second bill Senate No. 374, permitted their use in municipal elections only; both were indefinitely postponed. A bill on the same subject actually passed the House, No. 564, and was reported to the Senate, but never emerged from com-



mittee. A bill was also introduced in the Senate, No. 364, by Mr. Henry C. Duncan, authorizing women to vote at elections of members of boards of school commissioners in cities, but the bill was never reported from committee.

**446. Status of Pending Amendments—Committee Report (January 15, 1897).**

On January 15, the Senate Committee on Unfinished Business made the following report relative to the pending amendments. The report was concurred in.

*[Senate Journal, Sixtieth Session, 154.]*

We, your Committee on Phraseology and Arrangement of Bills and Unfinished Business, beg leave to report to the Senate that enrolled joint resolution No. 3, passed by the General Assembly of the State of Indiana, in 1895, and joint resolution No. 1, passed by the General Assembly in 1895, are pending as unfinished business, and we recommend that the same be referred to the Committee on Revision of the Constitution.

**447. Committee Reports on Supreme Court Membership Amendment (February 9, 1897).**

On February 9, the Committee on Revision of the Constitution presented a divided report on Joint resolution No. 1. The majority report recommended indefinite postponement; the minority report recommended passage. The majority report was adopted by a vote of 24-22.

**MAJORITY REPORT.**

*[Senate Journal, Sixtieth Session, 584.]*

A majority of your Committee on Revision of the Constitution, to which was referred joint Senate resolution No. 1, chapter CLV of the acts of 1895, a proposed amendment, has had the same under consideration, and begs leave to report the same back to the Senate with the recommendation that the further consideration of said constitutional amendment be indefinitely postponed.

J. D. EARLY, Chairman,  
R. O. HAWKINS,  
E. G. HOGATE,  
J. J. M. LAFOLLETTE,  
C. P. DRUMMOND,  
J. H. SHEA.

**MINORITY REPORT.**

A minority of your Committee on the Revision of the Con-

stitution, to which was referred joint Senate resolution No. 1, being CLV of the acts of 1895, a proposed amendment of the Constitution, has had the same under consideration, and begs leave to report the same back to the Senate with the recommendation that said resolution do pass.

C. E. SHIVELEY.

**448. Senate Committee Report on Voting Machine Amendment (February 10, 1897).**

The report on Joint resolution No. 3, recommending indefinite postponement, was presented the following day, February 10, and concurred in.

*[Senate Journal, Sixtieth Session, 587.]*

Your Committee on the Revision of the Constitution, to which was referred enrolled joint resolution No. 3, House of Representatives, being chapter CLI, of the acts of 1895, a proposed amendment of the Constitution, has had the same under consideration, and begs leave to report the same back to the Senate with the recommendation that the further consideration of said constitutional amendment be indefinitely postponed.

J. D. EARLY,  
Chairman.

**449. Membership of Supreme Court (February 16, 1897).**

As the Senate had definitely disposed of all pending amendments they were now competent to propose new ones. Accordingly, on February 16, Senator J. D. Early, a Republican, proposed an amendment fixing the membership of the Supreme Court at from five to eleven judges. The resolution was referred to the Committee on Revision of the Constitution, and reported favorably the following day, February 17. In its original form, the resolution was as follows.

**ORIGINAL FORM OF SUPREME COURT AMENDMENT (FEBRUARY 16, 1897).**

*[Senate Journal, Sixtieth Session, 735.]*

Joint resolution No. 4 to amend Section 2 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 7 of said Constitution to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than eleven judges, a majority of whom shall form a quorum, and they shall hold their offices for six years if they so long behave well.

AMENDMENT TO SUPREME COURT AMENDMENT (FEBRUARY 23, 1897).

On February 23, on motion of Senator Enoch G. Hogate, the resolution was amended as follows:

[*Senate Journal, Sixtieth Session, 924.*]

Add at the end of Section 2 the following words:

Any vacancy caused by death or resignation shall be filled by the Governor, as is now provided by the Constitution; but any increase in the number of judges shall not be filled by appointment, but by election at the next general election after any increase is ordered.

FORM OF SUPREME COURT AMENDMENT AS FINALLY ADOPTED.

By a vote of 39-0, the constitutional rule was suspended and the resolution was read a third time and passed by a vote of 37-1. The House Judiciary Committee reported favorably on the resolution and it passed the House on March 5, by a vote of 57-32. The resolution as finally adopted was as follows:

[*House Journal, Sixtieth Session, 1495.*]

Engrossed Senate joint resolution No. 4, entitled: A joint resolution to amend Section 2 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State, be, and the same is now agreed to and referred to the General Assembly of said State, to be chosen at the next general election:

Amend Section 2 of Article 7 of said Constitution to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than eleven Judges, a majority of whom shall form a quorum, and they shall hold their offices for six years, if they so long behave well. Any vacancy caused by death or resignation, shall be filled by the Governor as is now provided by the Constitution; but any increase in the number of Judges shall not be filled by appointment, but by election at the next general election after any increase is ordered.

**450. Qualifications of Lawyers (February 16, 1897).**

The amendment authorizing the General Assembly to prescribe qualifications for lawyers, was introduced in the Senate on February 16, by Senator J. D. Early and referred to the Committee on Revision of the Constitution. The committee reported favorably on February 17, and the resolution passed on February 26, by a vote of 38-3. The resolution passed the House on March 6, by a vote of 51-38.

[*House Journal, Sixtieth Session, 1571.*]

Engrossed Senate joint resolution No. 5 entitled: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State, to be chosen at the next general election.

Sec. 21. The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

**451. Initiative and Referendum (January 19, 1897).**

On January 19, Mr. Frank A. Horner, a Democrat, introduced a resolution in the Senate proposing an amendment to the Constitution, providing for a municipal and state-wide initiative and referendum. The resolution was referred to the Committee on Revision of the Constitution, and reported unfavorably on January 27, "for the reason that said resolution proposes an amendment to the Constitution, and there being now pending before the General Assembly two amendments of the Constitution, the proposed amendment is premature and out of order under Section 2 of Article 16 of the Constitution." The report was concurred in.

[*Senate Journal, Sixtieth Session, 221.*]

Joint Senate resolution No. 35.

*Be it enacted by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same here now is agreed to and referred to the General Assembly of said State, to be chosen at the next general election:

Amend Section 1 of Article 4 of said Constitution to read as follows:

*One.* The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana," except such laws as may be passed by vote of the electors, as herein provided, and such

laws shall begin as follows: "Be it enacted by the people of the State of Indiana," and no law shall be enacted except by bill or by petition and vote of qualified electors.

*Two.* The legislative power upon all measures for the government of the whole State shall be exercised by the Senate and House of Representatives, and, in addition thereto, shall be vested in the electors of the State qualified to vote for members of the Senate and the House of Representatives.

The legislative power upon all measures for the government of any municipal division of the State, such as city and town, shall be exercised by the legislative body thereof, and by the Senate and House of Representatives, and, in addition thereto, shall be vested in the qualified electors thereof.

*Three.* The right to reject any measure passed by the Senate and House of Representatives, affecting the whole State, shall be vested in the electors of the State qualified to vote for members of the Senate and the House of Representatives; and the right to reject any measure affecting less than the whole State, passed by the Senate and the House of Representatives, shall be vested in the qualified electors of each municipal division, in so far as the measure shall affect such division; and the right to reject any measure passed by the legislative body of any municipal division of the State, such as city and town, shall be vested in the qualified electors thereof.

*Four.* The Senate and House of Representatives at its first session after the adoption of this amendment shall, and when necessary from time to time thereafter may, pass laws to carry the amendment into effect. Such laws may provide that measures for the immediate preservation of the public peace, health and safety shall take effect immediately, but must provide that no other measure shall go into effect until the expiration of a period, fixed by the legislature, for filing petitions for a vote of the electors on any bill passed; and if such petition shall be filed, then not until a vote is had thereon. Should the law or laws to carry the provisions of this amendment into effect be passed as hereinbefore required, or, if passed, be objected to by qualified electors, they, in number not less than five per centum of the votes cast at the last election for members of the General Assembly, may, within ninety days after the adjournment of any legislature, sign and file with the Secretary of State, a petition or petitions, to enact a law or laws for such purpose, and the Secretary of State shall submit the law as passed by the Senate and House of Representatives, if any,



and such laws proposed by the petitioners, to the vote of the qualified electors, at the next regular State election, for a choice thereof, and the law or laws in favor of which the largest number of votes shall then be cast shall be declared adopted.

*Five.* Any measure enacted by a vote of the qualified electors, shall not be repealed or altered without a vote of the electors on the proposed repeal or alteration.

*Six.* Nothing in the Constitution shall be taken or construed to limit the foregoing power of the legislation vested in the qualified electors, nor to require the presentation to or approval by the Governor or any other officer, of any law enacted by a vote of the electors, and all provisions therein in conflict herewith are hereby rescinded and annulled.

*Resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.

#### 452. Membership of General Assembly (February 19, 1897).

On February 19, Senator William B. Gill, a Democrat, introduced a resolution proposing to fix the membership of the House at 50, and of the Senate at 25. The resolution was referred to the Committee on Revision of the Constitution and never reported back.

[*Senate Journal, Sixtieth Session, 798.*]

Senate joint resolution No. 7 of the General Assembly of the State of Indiana to amend Section 2 of Article 4 of the Constitution of the State of Indiana, concerning the number of the members of the General Assembly, and the manner of their election.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following amendment to the Constitution of the State of Indiana be, and the same is now hereby, agreed to and referred to the next General Assembly of the State to be chosen at the next general election, and when favorably passed upon by said succeeding General Assembly, to be submitted to the electors as provided by law, such amendment to read as follows:

The Senate shall not exceed twenty-five nor the House of Representatives fifty members, and they shall be chosen by the electors of the respective counties or districts into which the State may from time to time be divided.

Sec. 2. *Be it further resolved,* That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No 1.

**453. Terms of County Officers (January 19, 1897).**

The amendment fixing the terms of county officers was introduced in the House on January 19 by Mr. Felix G. Thornton, a Democrat, and referred to the Judiciary Committee. On February 4, the resolution was indefinitely postponed.

[*House Journal, Sixtieth Session, 551.*]

House joint resolution No. 1, entitled a joint resolution to amend Section 2 of Article 6 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the State of Indiana be, and the same is now hereby agreed to, and referred to the General Assembly of the State to be chosen at the next general election, to wit: Amend Section 2 of Article 6 of said Constitution to read as follows:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor. The clerk, auditor, recorder, treasurer and sheriff shall continue in office four years, and no person shall be eligible to the office of clerk, auditor, recorder, treasurer or sheriff more than four years in any period of eight years. The coroner and surveyor shall continue in office two years; and no person shall be eligible to the office of coroner or surveyor more than four years in any period of six years.

**THE SIXTY-FIRST GENERAL ASSEMBLY (1899).**

The Republicans still maintained a majority in the 61st session of 1899. There were 30 Republicans and 20 Democrats in the Senate, and 57 Republicans and 43 Democrats in the House. There were two amendments pending, both of which were adopted and submitted to the people for ratification. These amendments were designed to increase the membership of the Supreme Court, and to authorize the General Assembly to prescribe the qualifications to practice law. Other amendments were proposed but none were adopted, as the pendency of amendments rendered the submission of new ones impossible. The proposed amendments fixed the terms of county officers at four years, extended the right of suffrage to women, provided for the ownership of public utilities, extended the duration of a regular legislative session to 120 days, and provided for the initiative and referendum. One attempt was also made to submit to the people the question of calling a constitutional convention. A bill was introduced in each House providing for the use of voting machines. The House bill, No. 479, was withdrawn, and the Senate bill, No. 137, was passed and approved by the Governor on March 2.

**454. Membership of Supreme Court (February 28, 1899).**

On January 16, Senator Jacob D. Early, at the request of the Secretary of State, returned to the Senate engrossed joint resolutions Nos. 4 and 5,

on the Revision of the Constitution, which joint resolutions were adopted by the General Assembly of 1897, for the further action of the Senate. Joint resolution No. 4 was favorably reported by the Committee on Revision of the Constitution on January 24. On February 9, the resolution passed the Senate by a vote of 34-1. The resolution passed the House on February 21 by a vote of 83-7, and was approved on February 28.

[*House Journal, Sixty-first Session, 1846.*]

Engrossed Senate, joint resolution, No. 4, entitled: A joint resolution to amend Section 2 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 of Article 7 of said Constitution to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than eleven judges, a majority of whom shall form a quorum, and they shall hold their offices for six years if they so long behave well. Any vacancy caused by death or resignation shall be filled by the Governor, as is now provided by the Constitution; but any increase in the number of judges shall not be filled by appointment, but by election at the next general election after any increase is ordered.

#### 455. Qualifications to Practice Law (February 22, 1899).

The amendment authorizing the General Assembly to prescribe qualifications for the practice of law, was reported favorably by the Committee on Revision of the Constitution on January 21, and was passed by the Senate on January 30 by a vote of 35-2. The resolution passed the House on February 16 by a vote of 70-9, and was approved on February 22.

[*House Journal, Sixty-first Session, 1188.*]

Engrossed Senate joint resolution No. 5 to amend Section 21 of Article 7 of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election:

Sec. 2. The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

**456. Submission of Amendments to People (March 6, 1899).**

The act providing for the submission of the foregoing amendments to the people was introduced in the Senate on February 8 by Mr. Jacob D. Early and passed the Senate on February 16 by a vote of 35-1, and the House on March 2 by a vote of 75-4. The original bill provided that the amendments should be submitted to the people at a special election held in May, 1902. On second reading in the Senate, the bill was amended to provide that the amendments should be submitted at a special election in April, 1900, and in this form the bill passed the Senate. In the House, the bill was amended to provide that the amendments should be submitted at the general election in November, 1900, and in this form the bill finally passed.

[*Laws, Sixty-first Session, 560.*]

AN ACT providing for a submission to the people of the State for their adoption or rejection by ballot of the proposed constitutional amendments passed by the General Assemblies of 1897 and 1899.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be a vote taken by the people at the next general election to be held on the first Tuesday after the first Monday in November in the year 1900, on the adoption or rejection of the proposed amendments to the constitution adopted by the General Assemblies of the State of Indiana in the years 1897 and 1899, and for the purpose and preparation of tickets in the counties for the said election, the clerk of the circuit court shall cause to be printed on white paper two times the number of ballots that there were votes cast in the county for Governor by all political parties at the general election in the year 1896. Senate joint resolution No. 4 of the session of 1897. The Supreme Court shall consist of not less than five nor more than eleven Judges, a majority of whom shall form a quorum and they shall have [hold] their offices for six years if they so long behave well. Any vacancy caused by death or resignation shall be filled by the Governor, as is now provided by the Constitution; but any increase in the number of Judges shall not be filled by appointment, but by election at the next General election, after any increase is ordered. Shall be printed on the ballots and shall be designated as Amendment No. 1 and Senate joint resolution No. 5 of the session of 1897. The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice; Shall be printed on the ballots and shall be designated as Amendment No. 2, and there shall be printed on the ballots to the left of each separate amendment the words "For the amendment," and underneath the words "Against the amendment," and the voter shall



make a cross with a blue pencil in the square to the left of which ever set of words he desires to vote. Said ballots shall be delivered to the election precincts in the same manner as ballots for voting for district and county officers are now delivered, and they shall be delivered to the voters before entering the election booth in the manner now provided by law for delivering the ballots to the voters; and the election board will count out such ballots in the same manner as they count out the votes given for district and county offices, and the election shall be held and in all respects governed by the laws governing elections, except as hereinafter provided.

Sec. 2. And after the returns are tabulated and counted, the clerk of the circuit court shall certify under the seal of his office to the Secretary of State, the total vote given for each amendment, and the total vote cast against each amendment, and when the Secretary of State shall have tabulated the same from all the counties of the State, the said Secretary of State shall certify to the Governor the total vote for and against each amendment. If it shall appear that a majority of all the votes cast at such election were given in favor of the adoption of either or both of said proposed constitutional amendments, the Governor shall make proclamation, and it or they shall then become part of the Constitution of the State of Indiana.

S. 387. Approved March 6, 1899.

**457. Notification of Electors—Resolution of Instruction (February 20, 1899).**

On February 20, Mr. Silas A. Canada, a Republican, introduced a resolution in the House relative to giving notice to the electors of the submission of the constitutional amendments at the general election of 1900. The resolution passed the House on February 22 by a vote of 71-3, and was referred to the Senate, but no action was taken.

[*Senate Journal, Sixty-first Session, 948.*]

Engrossed House joint resolution No. 4: A joint resolution in relation to the giving notice to the electors of the State of Indiana of the submission to the same, for their approval or rejection of the proposed amendments to the Constitution of the State of Indiana, in relation to the amendments to Section 2, Article 7 of said Constitution, and the amendments to Section 21, Article 7 of the Constitution, and the number as designated to each amendment to be voted upon by the said qualified voters, and the duty of the Governor in said submission, and defining the number of votes cast necessary to adopt or reject said amendments.

Section 1. *Be it resolved by the General Assembly of the State*



*of Indiana*, That the Secretary of State is hereby authorized and required to give notice in the Indianapolis Journal and Sentinel by the insertion of said notice three times in said papers not later than sixty days prior to said elections, of the action of the General Assembly in relation to the Constitution of the State of Indiana, proposing an amendment to Section 21, Article 7, of the Constitution of the State of Indiana, which reads as follows:

Sec. 2. The General Assembly shall, by law, prescribe what qualifications shall be necessary for admission to practice law in all courts of justice; also to amend Section 2 of Article 7, of the Constitution of the State of Indiana, which amendment reads as follows: "Sec. 2. The Supreme Court shall consist of not less than five nor more than eleven judges, a majority of whom shall form a quorum, and they shall hold their office for six years if they so long behave well. Any vacancy caused by death or resignation shall be filled by the Governor as is now provided by the Constitution, but any increase in the number of judges shall not be filled by appointment, but by election at the next general election after any increase is ordered," which shall be submitted to the qualified voters of the State at the next general election to be held on the first Tuesday after the first Monday in November, 1900.

Sec. 2. That said amendment to Section 2 of Article 7 of the Constitution of the State, shall be known and voted upon as number four, and that said amendment to Section 21 of Article 7 of the Constitution of the State shall be known and voted upon as number five, and that said qualified voter shall vote upon each amendment separately, and those in favor of said amendment will mark thus, X, opposite the word "yes" upon the ticket prepared for voting upon said amendment, those opposed will mark thus, X, opposite the word "no."

Sec. 3. That the Governor be and he is hereby required to give notice of the submission to the qualified voters of the State, and full instructions to the election officers of the State, as to the requirements of the Constitution and laws governing said election, by proclamation or otherwise.

Sec. 4. That a majority of all the votes cast in favor of said amendment shall be sufficient for the adoption of the same, and a majority of all the votes cast against said amendments shall be sufficient to reject the same.

#### 458. Term of County Officers.

A resolution was introduced in both the House and the Senate fixing the

term of county officers at four years. The Senate resolution was introduced on January 10 by Mr. Royal Purcell, a Democrat, and referred to the Committee on Revision of the Constitution. On January 21, the resolution was indefinitely postponed.

SENATE RESOLUTION (JANUARY 10, 1899).

[*Senate Journal, Sixty-first Session, 65.*]

Senate joint resolution No. 1.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State, be and the same is now agreed to, and referred to the General Assembly of said State to be chosen at the next general election. Amend Section 2 of Article 6 of said Constitution to read as follows:

Sec. 2. There shall be elected, in each county, by the voters thereof, at the time of holding the general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor and county assessor, each of whom shall continue in office for four years, and no person shall be eligible for re-election to any of said offices in any period of eight years.

SPEAKER'S DECISIONS ON VALIDITY OF HOUSE AMENDMENT (JANUARY 28, 1899).

The House resolution was introduced on January 9 by Mr. E. L. Patterson, a Democrat, and referred to the Committee on County and Township Business. On January 17, the Committee reported favorably, and the report was concurred in. On January 27, the resolution came up for third reading. Thereupon the point of order was raised "that the resolution could not be considered by this General Assembly because there were now pending amendments to the Constitution which had been agreed to by the General Assembly of two years ago, and were still awaiting the action of this General Assembly." The speaker declined to rule upon the point at the time and asked unanimous consent of the House to postpone further action on the resolution until the point of order should be determined. On the following day, January 28, the Speaker handed down the following opinion holding that the resolution was out of order according to the constitutional provision.

[*House Journal, Sixty-first Session, 496.*]

At this point the Speaker stated that he was prepared to rule on the point of order made by the gentleman from Boone (Mr. Artman), and taken under advisement on yesterday, and rendered the following opinion:

The point of order made by the gentleman from Boone is that

Section 2 of Article 16 of the Constitution of the State of Indiana, prohibits one General Assembly from considering or proposing additional amendments to the Constitution while there is an amendment or amendments which have been agreed upon by one General Assembly awaiting the action of the succeeding General Assembly or of the electors.

Section 2 of Article 16 of the Constitution of the State of Indiana provides that, while an amendment or amendments which shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

The language of the Constitution is clear, and the only question to decide is whether there are any amendments which were agreed to by the General Assembly two years ago, awaiting the action of this General Assembly, or of the electors. An examination of the record shows that two proposed amendments to the Constitution were agreed to by the General Assembly two years ago. These amendments appear in the Acts of 1897, at pages 333 and 334. These amendments are still awaiting the action of this General Assembly, and so long as they are awaiting such action no further amendments can properly be proposed. If this General Assembly should take up and not agree to these amendments, other amendments would be in order. If the amendments should be agreed to, then no further amendments could be proposed until the amendments agreed to had been submitted to the electors.

For the reasons given I shall hold that the point of order made by the gentleman from Boone (Mr. Artman) is well taken, and that the resolution can not be further considered while the amendments are pending either before the General Assembly or awaiting the action of the electors.

As soon as the Speaker had rendered this opinion, Mr. Patterson, the author, withdrew the joint resolution. The resolution was proposed in the following form.

HOUSE RESOLUTION (JANUARY 9, 1899).

[*House Journal, Sixty-first Session, 488.*]

Engrossed House joint resolution No. 1, entitled: A joint resolution to amend Section 2 of Article 6 of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of the State of Indiana be, and the same is now hereby agreed to and referred to the next General Assembly of the State

of Indiana, to be chosen at the next general election, to-wit: Amend Section 2 of Article 6 of said Constitution, to read as follows:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general election, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor. The clerk, auditor, recorder, treasurer, sheriff, coroner and surveyor shall continue in office four years, and no person shall be eligible to the office of clerk, auditor, recorder, treasurer, sheriff, coroner or surveyor for more than four years in any period of eight years.

#### 459. Woman Suffrage.

There was a revival of interest in the question of woman suffrage during the session of 1899 which was largely inspired by sentiment in the State at large. Petitions were presented in the House from Morgan, Tipton, Clay, Elkhart, Franklin, Union, Gibson, Hamilton, Howard, Johnson, Marion, Delaware, Parke, White, Crawford, Porter, Madison, Wabash, Wayne, Cass, St. Joseph, Grant, Steuben, and Jay counties, signed by approximately 10,000 voters, asking that the Constitution be so amended as to confer the right of suffrage on women. One similar petition from Noble county was presented in the Senate. As a result of this propaganda, a woman's suffrage amendment was presented in both houses. The Senate amendment was presented by request on January 13 by Mr. Orrin Z. Hubbell, a Republican, and referred to the Committee on Revision of the Constitution. The resolution as introduced was as follows:

ORIGINAL SENATE WOMAN SUFFRAGE AMENDMENT (JANUARY 13, 1899).

[*Senate Journal, Sixty-first Session, 99.*]

Senate joint resolution No. 2, entitled: A joint resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 of Article 2 of said Constitution to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, without distinction of sex, of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immedi-



ately preceding such election, and every person of foreign birth, without distinction of sex, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

COMMITTEE REPORT ON SENATE AMENDMENT (JANUARY 26, 1899).

On January 26, on recommendation of the committee, the resolution was commended to the consideration of the 62d General Assembly.

[*Senate Journal, Sixty-first Session, 290.*]

Your Committee on Revision of Constitution, to which was referred Senate joint resolution No. 2, being an amendment to the Constitution, introduced by Senator Hubbell, has had the same under consideration, and begs leave to report the same back to the Senate with the recommendation that, inasmuch as there are now pending two amendments to the Constitution, and that Section 2 of Article 16 of said Constitution provides that no amendment shall be proposed while others are pending; that they believe that the principle involved in this resolution is such that people of the State should have the opportunity of voting on the same; that this session of the General Assembly can not constitutionally act upon said resolution; that in order to show the attitude of the Senate on the subject-matter of said joint resolution, this resolution be commended to the Sixty-second General Assembly for its favorable consideration.

HOUSE WOMAN SUFFRAGE AMENDMENT (JANUARY 13, 1899).

The House resolution was introduced on January 13, by Mr. Quincy A. Blankenship, a Republican, and referred to the Judiciary Committee, but was never reported back.

[*Senate Journal, Sixty-first Session, 160.*]

House joint resolution No. 2 to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana, That the following proposed amendment to the Con-*



stitution of the said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 of Article 2 of said Constitution to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution every citizen of the United States, without distinction of sex, of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every person of foreign birth, without distinction of sex, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside if he shall have been duly registered according to law.

#### 460. Municipal Ownership of Public Utilities.

An amendment was proposed in both houses reducing the municipal debt limit to one-half of one per cent on all taxable property and authorizing municipalities to own and operate public utilities. The Senate resolution was introduced by Mr. Albert M. Burns, a Republican, on January 16, and referred to the Committee on Revision of the Constitution. On January 21, on recommendation of the committee, the resolution was indefinitely postponed.

#### SENATE RESOLUTION (JANUARY 16, 1899).

[*Senate Journal, Sixty-first Session, 108.*]

Senate joint resolution No. 5, as follows: Joint resolution to amend Section 1, Article 13, of the Indiana Constitution, providing for the municipal ownership of public utilities:

*Resolved*, by the General Assembly of the State of Indiana, That it is hereby proposed and agreed that Section 1, Article 13, of the Constitution of the State of Indiana, be amended to read as follows:

Section 1. No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose, to any amount in the aggregate exceeding one-half of one per cent on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county purposes

previous to the incurring of such indebtedness, and all bonds and obligations in excess of such amount given by such corporation shall be void: Provided, That in time of war, foreign invasion, or other great public calamity on petition of a majority of the legal voters within the limits of such corporation; the public authorities in their discretion, may incur obligations necessary for the public protection and defense, to such amount as may be requested in such petition: Provided, further, That for the purpose of constructing or purchasing water works, street railways, telegraph and telephone systems, electric lighting plants, artificial or natural gas plants, conduit systems for underground wires or any other public utility, authority is hereby granted to such corporation to issue bonds in any desirable amount, to be first agreed upon by the Common Council of such corporations, and then sanctioned by a majority vote of the legal voters thereof at a special election held for this purpose.

#### HOUSE RESOLUTION (JANUARY 18, 1899).

The House resolution was introduced on January 18 by Mr. James McD. Huff, a Republican, and referred to the Judiciary Committee. On January 21, on recommendation of the committee, by an indirect vote of 42-22, the resolution was indefinitely postponed.

[*House Journal, Sixty-first Session, 332.*]

House joint resolution No. 3, entitled: To amend Section 1 of Article 13 of the Constitution of the State of Indiana, and providing for the municipal ownership of public utilities.

Section 1. *Resolved by the General Assembly of the State of Indiana*, That it is hereby proposed and agreed that Section 1 Article 13, of the Constitution of the State of Indiana, be amended to read as follows: Section 1. No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose, to any amount in the aggregate exceeding one-half of one per cent on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county purposes previous to the incurring of such indebtedness, and all bonds and obligations in excess of such amount given by such corporation shall be void: Provided, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the legal voters within the limits of such corporation, the public authorities in their discretion, may incur obligations necessary for the public protection and defense, to such amount as may

be requested in such petition: Provided, further, That for the purpose of constructing or purchasing water works, street railways, telegraph and telephone systems, electric lighting plants, artificial or natural gas plants, conduit systems for underground wires or any other public utility, authority is hereby granted to such corporation to issue bonds in any desired amount, to be first agreed upon by the Common Council of such corporations, and then sanctioned by a majority vote of the legal voters thereof at a special election held for this purpose.

**461. Duration of Regular Legislative Sessions (January 20, 1899).**

Mr. Thomas J. Brooks, a Republican, introduced a resolution in the Senate, on January 20, fixing regular legislative sessions at 120 days and providing that no business should be considered at a special session except such as was included in the Governor's call. The resolution was indefinitely postponed on February 14.

*[Senate Journal, Sixty-first Session, 183.]*

Senate joint resolution No. 7 to amend Section 29 of Article 4 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of the State of Indiana be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 29 of Article 4 of said Constitution to read as follows:

The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly shall extend beyond the term of 120 days, nor any special session beyond the term of forty days, and at said special session no business shall be considered except that included in the Governor's call.

**462. Initiative and Referendum (February 6, 1899).**

The initiative and referendum amendment of the preceding session was introduced in the Senate by Mr. William B. Gill, a Democrat, on February 6, and indefinitely postponed on February 14.

*[Senate Journal, Sixty-first Session, 482.]*

Senate joint resolution No. 8.

*Be it enacted by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of

said State be, and the same here now is agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 1 of Article 4 of said Constitution to read as follows:

Section 1. The style of every law shall be: "*Be it enacted by the General Assembly of the State of Indiana,*" except such laws as may be passed by vote of the electors as herein provided, and such laws shall begin as follows: "*Be it enacted by the people of the State of Indiana,*" and no law shall be enacted except by bill or by petition and vote of qualified electors.

Sec. 2. The legislative power upon all measures for the government of the whole State shall be exercised by the Senate and House of Representatives. The legislative power upon all measures for the government of any municipal division of the State, such as city and town, shall be exercised by the legislative body thereof and by the Senate and House of Representatives, and in addition thereto, shall be vested in the qualified electors thereof.

Sec. 3. The right to reject any measure passed by the Senate and House of Representatives, affecting the whole State, shall be vested in the electors of the State qualified to vote for the members of the Senate and House of Representatives; the right to reject any measure affecting less than the whole State, passed by the Senate and the House of Representatives, shall be vested in the qualified electors of each municipal division in so far as the measure shall affect such division; and the right to reject any measure passed by the legislative body of any municipal division of the State, such as city and town, shall be vested in the qualified electors thereof.

Sec. 4. The Senate and House of Representatives at its first session after the adoption of this amendment shall, and when necessary from time to time thereafter may, pass laws to carry the amendment into effect. Such laws may provide that measures for the immediate preservation of the public peace, health and safety shall take effect immediately, but must provide that no other measure shall go into effect until the expiration of a period fixed by the legislature for filing petition for a vote of the electors on any bill passed, and if such petition shall be filed, then not until a vote is had thereon. Should the law or laws to carry the provisions of this amendment into effect be passed as hereinbefore required, or, if passed, be objected to by qualified electors, they, in number not less than five per centum of the votes cast at the last election for members of the General Assembly, may, with-



in ninety days after the adjournment of any legislature, sign and file with the Secretary of State, a petition or petitions to enact a law or laws for such purpose, and the Secretary of State shall submit the law as passed by the Senate and House of Representatives, if any, and such laws proposed by the petitioners to the vote of the qualified electors at the next regular State election for a choice thereof, and the law or laws in favor of which the largest number of votes shall then be cast shall be declared adopted.

Sec. 5. Any measure enacted by a vote of the qualified electors shall not be repealed or altered without a vote of the electors on the proposed repeal or alteration.

Sec. 6. Nothing in the Constitution shall be taken or construed to limit the foregoing power of the legislation vested in the qualified electors, nor to require the presentation to or approval by the Governor or any other officer of any law enacted by a vote of the electors, and all provisions therein in conflict herewith are hereby rescinded and annulled.

*Resolved*, That in submitting this amendment to the electors of the State to be voted on it shall be designated as Amendment No. 1.

#### 463. Constitutional Convention (January 25, 1899).

One attempt was made to call a constitutional convention. On January 25, Mr. Enoch G. Hogate introduced a bill in the Senate providing for the calling of a constitutional convention. The bill was referred to the Committee on Revision of the Constitution, and reported favorably on January 31. On February 9, several amendments were made and the bill failed to pass by a vote of 19-26.

[*Senate Journal, Sixty-first Session, 274.*]

Senate bill No. 243, entitled: A bill for an act to provide for the call of a convention of the people of the State of Indiana to revise, amend, alter or make a new Constitution for said State.

#### 464. Governor's Proclamation on Constitutional Amendments Vote (November 30, 1900).

The Governor's proclamation declaring the vote on the proposed constitutional amendments was issued on November 30, 1900. See Appendix X.

[*Mount Messages . . . , 1897-1901, 68.*]

#### CONSTITUTIONAL AMENDMENT PROCLAMATION.

Indianapolis, Ind., November 30, 1900.

*To the People of Indiana:*

It is hereby announced and proclaimed that at a general elec-



tion held November 6, 1900, two proposed constitutional amendments, known as No. 1 and No. 2, were submitted for the ratification or rejection of the qualified electors of the State; and subsequently, to-wit, on the 20th day of November, 1900, it was certified to me by the Secretary of State that the total vote on said amendments, as tabulated and counted for said amendments, was as follows:

The total vote for the first proposed amendment was 314,710; the total vote given against said proposed amendment was 178,960.

And that the total vote given for the second proposed amendment was 240,031; and against said second proposed amendment, 144,072.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State of Indiana, at the Capitol in Indianapolis, this 30th day of November, A.D. 1900.

JAMES A. MOUNT,

By the Governor:

Governor.

UNION B. HUNT,

(SEAL)

Secretary of State.

**465. In re Denny—Supreme Court and Lawyers Amendments Declared Not Adopted (November, 1900).**

The Supreme Court and lawyers amendments were submitted to the voters at the general election of November 6, 1900. At that election, 664,094 votes were cast for presidential electors and 655,965 votes for governor; 240,031 votes were cast for the lawyers amendment and 144,072 against, and 314,710 votes were cast for the Supreme Court amendment and 178,960 against. A majority of the votes cast for Governor was 327,983, and the largest number of affirmative votes cast for these amendments fell 13,272 votes short of a majority. On November 30, the Governor issued his proclamation declaring the vote cast for and against each amendment but did not state whether either had been adopted or rejected. On the assumption that the lawyers amendment had been adopted by the electors, and without waiting for the enactment of new statutes to carry the amendment into effect, the Marion Circuit Court established rules for ascertaining the fitness of candidates for admission to the bar, and appointed a board of examiners. Thereafter, one Denny, applied to be admitted to practice law in the Marion Circuit Court, alleging as qualifications only that he was a person of good moral character and a voter in Marion county, and he declined to take the examination prescribed. The Marion Circuit Court refused to admit Denny to practice, proceeding in its contention on the assumption that the lawyers amendment had been adopted. Denny thereupon appealed; the case was heard and decided at the November term of 1900; the decision of the lower court was reversed, the highest court holding that the proposed amendment

had failed of adoption, because it had not been ratified by a majority of the votes cast at the election. The opinion of the court was written by Mr. Justice Baker and a dissenting opinion by Justice Jordan.

The leading affirmative declarations of the court in this case were the following: (1) The authors of the organic law never intended that any of its safeguards should be abrogated by a failure to demand the abrogation. (2) The indifference of the many should not be a positive element in effecting changes in the organic law desired by the few; judgments effecting changes in the Constitution should not be taken by default. (3) The Constitution should stand unaltered until the sovereign majority by affirmative action, express their desire for a change. (4) Majority means "more than half." Electors are persons legally qualified to vote. Voters are either persons who vote or persons who are legally entitled to vote. (5) In the absence of registration, the number of persons legally qualified to vote is determined by the election itself, which number, because of deaths, removals and accessions, is a "continually variable quantity."

The leading arguments advanced in favor of the theory that the amendments had been adopted but which were rejected by the court, were the following: (1) The election of 1900, as to the proposed amendments, was a "special election." An act of 1889 provided a method for submitting constitutional amendments to the voters, by printing the proposition to be voted upon on the State ballot. The act of 1899, under which the two amendments under contemplation were submitted, required the clerks of the several circuit courts to prepare separate ballots containing the proposed constitutional amendments. Because the act of 1899 did not conform to the act of 1889, the election of 1900 was alleged to be a "special election" as to the proposed amendments submitted, and the court could not, therefore, take judicial knowledge of any election returns except those of the alleged special election. The court rejected this argument and held: (a) That an act of one General Assembly does not have "the effect of a constitutional restraint" upon the action of a successor; (b) "Prior to the designated time, there is no constitutional power in any general assembly to speak authoritatively on the subject of the submission of proposed amendments." Since there was but one voting place, one set of election officers, one poll list, one delivery of tickets, one standard of qualifications, one act of voting and one recording of that fact, the election was not special but general. (2) Because the number of persons who were entitled to vote at the election in excess of the 664,094 who actually voted for presidential electors, was a matter of conjecture, it was permissible to indulge the conjecture that there were no more persons entitled to vote on the proposed amendment than the 240,031 voting for, and the 144,072 voting against. (3) "A majority of the electors of the State" does not mean "a majority of *all* the electors of the State." The court replied that "the one form of expression may be more extensive than the other, but it is not more inclusive." (4) Only the votes counted for and against the proposed amendment in question should be considered in determining the number of the electors of the State.

Two conclusions of the Swift case were cited, one with approval and one with disapproval. (1) The conclusion that "It requires at least a majority of all the votes cast at the same election to ratify a constitutional amendment" was upheld. (2) The second major proposition of the Swift case was over-

turned. That proposition was that the proposed amendment under contemplation had not been adopted because the court judicially knew that more electors had participated in the township elections than had voted for and against the proposed amendment. Also, because it did not affirmatively appear that the amendment was adopted or rejected it might be resubmitted. The court in this case followed the dissenting opinion of Justice Niblack to the effect that the court cannot take judicial notice of the results of local elections. If the amendment had been submitted at a general election, with the same results, it would not have been adopted. But as township elections are local, and the court cannot take judicial notice of the returns, the amendments had therefore been ratified by a majority of the electors voting at the election at which the amendments were submitted.

#### OPINION OF THE COURT.

((156 Ind. 104, 108, 59 N.E. 359, 361, 51 L.R.A. 722, 725))

...If a majority of the electors of the State shall ratify a proposed amendment, it shall become a part of the Constitution; otherwise not. There is no room for construction. The language is too plain to admit of quibbling. "Majority" means "more than half." "Electors", with reference to an election, means, according to the lexicographers and universally accepted usage, "persons possessed of the legal qualifications entitling them to vote." The word "voters", on the other hand, has two meanings, "persons who perform the act of voting", and "persons who have the qualifications entitling them to vote." Constitutions are drafted with care. The framers of our Constitution deliberately selected and used the words in the meaning of which there could be no ambiguity. The sentence, "If more than half of the persons in the State who possess the legal qualifications entitling them to vote shall ratify the proposed amendment, it shall become a part of the Constitution", is a cumbersome equivalent. The idea is clearly and more succinctly expressed in the wording of the Constitution. No other standard for the adoption of proposed constitutional amendments may be set up by this court, becomingly or lawfully, than the one fixed by the Constitution—the affirmative ratification by "a majority of the electors of the State." So, in any case, the question becomes one, not of constitutional construction, but of evidence.

It is universally held that, in the absence of a provision for registration, the number of persons who possess the qualifications entitling them to vote at a given election is determined by the election itself. Deaths, minors coming of age, disfranchisements, removals from the State, or from the county, township, ward, or

precinct, within certain limits of time, make the number of electors a continually variable quantity. But when a person goes to the polls in his precinct, is passed by the challengers, is accepted by the election officers, and has his name enrolled on the poll lists as having voted, he thereby furnishes proof of the fact that he is an elector, a person possessed of the legal qualifications entitling him to vote at that election. And the poll lists furnish evidence of the total number of electors. And this evidence is just as definite and certain as that which could be afforded by a registration of the persons entitled to vote at that election, for the poll lists themselves form a registration.

... This court takes judicial notice of the returns made to the Secretary of State; and if the trial court had stated a different number, the finding would be ignored, because this court is charged with judicial knowledge of the fact that 240,031 is the correct number. From the same source and with the same authenticity this court knows judicially that at the same election 664,094 votes were cast for presidential electors, 655,965 votes for Governor, and 493,670 votes on the other proposed amendment. Since we know absolutely that more than twice 240,031 electors of the State participated in the election, we hold that the proposed amendment in question was rejected.

... But even if the act of 1899 were legitimately open to the construction that the proposed amendments were submitted at a special election, the proposed amendment in question has been rejected. First. The fact that 240,031 votes were counted for, and 144,072 against, the proposed amendment in question, is not definite proof that only 384,103 persons cast ballots on the proposition submitted at the alleged special election. At any election on a constitutional amendment, whether general or special, the question is, Has the amendment been ratified by a majority of the electors of the State? The act of 1899, viewed as a submission at a general election, is deficient in not providing for a return of the total number of electors marked on the poll lists as having voted; and viewed as a submission at a special election on the constitutional amendments only, it is deficient in not providing for a return of the total number of electors whose ballots on the constitutional amendments were deposited in the ballot box. One's standing as an elector, a person qualified to vote, is not destroyed by the election officers' decision to throw out his ballot on the ground, real or not, that it is mutilated or bears a distinguishing mark. Second. The two proposed amendments were



printed on a single ballot. If the election were special as to them, and if this court could look only to the returns of the alleged special election, how can the court properly shut its eyes to the fact that the 240,031 votes cast for the proposed amendment in question are less than half of the 493,670 votes recorded as having been counted on the other? What ones of the 493,670 are to be held as not being "electors of the State?"

The absolute judicial knowledge (evidence of the very highest class) that there were at least 664,094 persons entitled to vote on the proposed amendment, proves that the proposed amendment was defeated for a lack of a majority. On the other hand, to hold that the proposed amendment has been adopted, requires the acceptance of the conjecture that only the persons who succeeded in having their votes counted for and against the proposed amendment were legally qualified to vote on the subject. And this in the face of the facts that 493,670 votes were counted for and against the other proposed amendment, that 655,965 were counted for candidates for Governor, and that 664,094 were counted for candidates for presidential electors. It is possible to conjecture that there may have been more persons entitled to vote than the definitely known number of 664,094. But how can it be made a matter of conjecture that there were less.

...The only condition under which an amendment "shall become a part of this Constitution" is that "a majority of the electors of the State shall ratify the same." No other terms of adoption are named in any part of the article; and yet the argument of counsel assumes that the positive declaration in Section 1 is destroyed by their inference that the provision for taking a vote "for" and "against" means that only the votes counted "for" and "against" are to be considered. Counsel's inference would destroy as well the direct command in Section 1 that a proposed amendment "shall be agreed to by a majority of the members elected to each of the two houses," since a record of the votes "for" and "against" in each of the two houses is directed to be entered on their journals. But counsel do not claim or even suggest that, under the plain language of the article, a proposed amendment may be agreed to in either house by a majority of those voting "for" and "against" or by any number less than "a majority of the members elected." When the number of members elected to the senate is definitely known, that is the number of which it takes more than half to act affirmatively upon a proposed amendment. Similarly with the house; it is not a majority of the



quorum or those voting "for" or "against", but it is a majority of the body that is required. And similarly with the electors of the State; when the number of electors is definitely known, that is the number of which it takes more than half to act affirmatively upon a proposed amendment. The standard is made the same in the three bodies. And if the court has the means of knowing judicially the number composing each body, the rule is as easily applied in one body as in another.

The history of the article confirms our recognition of its plain meaning. The original resolution provided for ratification by "a majority of the qualified voters." A motion was made to instruct the committee on future amendments to substitute the words, "a majority of all the votes cast for and against the same." The motion, modified so as to require the committee only to consider the advisability of the substitution, was carried. The committee rejected the phrase, "a majority of all the votes cast for and against the same," and reported the following: "\* \* \* it shall be their duty to submit the same to the people at the next general election, \* \* \* and if a majority of all the electors voting at said election for members of the house of representatives \* \* \*". In the Convention, the following phraseology was agreed upon: "\* \* \* submit such amendment or amendments to the qualified electors of the State, and if a majority of said electors shall ratify the same, \* \* \*". After the committee on revision and phraseology had excised the word "qualified", the article stood as was finally approved by the convention and ratified by the people. It is noteworthy that the unlimited words "a majority of the electors of the State" were adopted after an affirmative rejection, first by the committee, of the limiting words "a majority of the votes cast for and against the same", and secondly, by the Convention, of the limiting words "a majority of the electors voting for members of the house." To hold in this case that the proposed amendment has been ratified, it would be necessary to strike out of article 16 the words "a majority of the electors of the State" and to substitute therefor "a majority of the votes cast for and against the same"—a process just the reverse of that carried out by the framers of our organic law. To hold in this case that the proposed amendment has been defeated, requires only an obedience to the clear letter and spirit of the Constitution, without adding to or taking from it one jot or tittle. And such obedience is our duty, for the Consti-

tution is as binding upon the judicial department of the State as it is upon the legislative or executive.

#### JUSTICE HADLEY'S CONCURRING OPINION.

Justice Hadley concurred in the opinion of the court and rested his concurrence upon the fact "that the amendment involved in this appeal did not receive a majority of the votes cast upon the subject of the amendments, and cast for and against amendment number one."

#### JUSTICE JORDAN'S DISSENTING OPINION.

An elaborate dissenting opinion was submitted by Mr. Justice Jordan. He quotes extensively from an imposing array of cases and concludes that: (1) The test by which the majority necessary for ratification of an amendment shall be determined, is to consider alone the majority of the combined or aggregate vote cast for and against the ratification of each amendment. (2) As to the amendments themselves, the election was special.

((156 Ind. 104, 126, 59 N.E. 359, 367, 51 L.R.A. 722, 731))

The solution of the question presented depends upon the interpretation to be given to the following clause in Section 1 of Article 16, "and if a majority of said electors shall ratify the same," etc. The contention of counsel for appellant is that the amendment in controversy can be held to be ratified only upon receiving a majority of all the votes cast at the general election held on the same day upon which a vote, as provided by the statute, was taken on ratifying or rejecting said amendment. This is asserted to be the test, whether such votes were cast upon the question of ratifying and rejecting the amendment, or were cast for the several candidates for Governor or other State officials whose names were printed upon the State ballots which were voted by the electors at the said general November election. Counsel insist that the difficulty which confronts us in determining the question herein involved, is not one of construction, but is one of evidence, and the argument is advanced that the rule to be enforced is this: "It being impossible to ascertain accurately the number of electors, the court will accept the testimony of the ballot-box as conclusive, but, in doing so, will recognize that every person who has put in the box a ballot for whatsoever has thereby proved himself an elector, and must be counted as one of the electors."

...It will be readily observed that the Constitution of this State is silent in reference to the particular election at which the amendments shall be submitted by the legislature to the electors for their ratification or rejection. It is equally silent in regard to

what shall be the criterion or standard by which the required majority shall be measured. It would, therefore, reasonably appear that our Constitution does not profess to control such matters, but has left them to the sound discretion of the legislature.

Tested by the rule, what may be said to be the meaning of the clause immediately following the declaration that "It shall be the duty of the legislature to submit such amendment, or amendments, to the qualified electors of the State," namely, "if a majority of said electors shall ratify the same," can this clause be interpreted to mean a majority of those voting for and against a proposed amendment, or must it be considered as extending beyond this criterion and providing some other or different standard or mode for ascertaining what is "a majority of said electors"? As an aid in the search for the meaning or intent thereof I am referred to the debates of the convention which framed the Constitution. While these can have no controlling effect upon the interpretation of that instrument, still they may be said to be of importance where they tend to support a construction which its own language or terms would indicate. An examination of the acts of the framers of our fundamental law in convention assembled discloses that the original article in relation to future amendments reported by the committee to the convention and its adoption recommended, required that such proposed amendments be submitted to the people at the next general election, and further provided "if a majority of all of the electors voting at said election for members of the house of representatives shall vote for such amendment or amendments, the same shall become a part of the Constitution." Mr. Owens\* subsequently presented a substitute for the article recommended by the committee which with the exception of some verbal changes made by the committee on phraseology, is substantially the same as Section 1 of Article 16 of the Constitution as finally adopted. Debates of Constitutional Convention pp. 1914, 1918. It will be seen that the substitute of Mr. Owens differs from Section two of the original article especially in this, that it does not require amendments to be submitted at the next general election nor neither does it require that "a majority of all the electors voting at said election for members of the house of representatives" shall be necessary to their ratification. It simply required "a majority of said electors" to ratify the same. When the matter came up again in the convention for a third reading, Mr. Pettit moved to recommit it with instructions to insert the following provision: "No amendment shall be made to

\*((Robert Dale Owen))

the Constitution unless the same shall have been called for and approved of by a majority of all the voters of the State." A vote being taken on Mr. Pettit's motion, it was lost by a vote of twenty-seven to ninety-three, and the section was thereupon passed by a vote of seventy-seven to forty-five. Debates of Constitutional Convention, p. 1940. Thereafter the second section of Article 16 was added providing that the amendment or amendments should be so submitted "that the electors shall vote for or against each of said amendments separately." An examination of these debates apparently discloses that it was the affirmative sense or meaning of the convention to fix or provide no particular time for an election at which proposed amendments should be submitted to the people. Neither does it appear that it was intended to fix or provide, aside from the usual and ordinary one, any particular method or criterion for ascertaining the majority of the electors voting at an election called in pursuance of an act of the legislature for the submission of proposed amendments. As indicated by the Constitution itself, as well as by the debates and action of those who framed it, it would certainly seem that the question both as to the time when the amendment or amendments were to be submitted, and likewise as to the standard or method by which the required majority should be tested, was, as previously asserted, left by the Constitution to the consideration of the legislature in submitting proposed amendments.

...I may also indulge in the presumption that the men who framed the Constitution and the people who ratified their work, must have understood that the great body of electors of the State is composed of a changing, uncertain, or indefinite number, which it is difficult at any given time actually to ascertain. They also presumably knew that there are thousands comprising that body who by reason of religious or conscientious views, or indifference, or from other reasons, decline when the opportunity is presented to exercise the right of suffrage. That while many do not vote at all others will vote only for some particular proposition or officer and will fail or decline to vote for others, and that, therefore, the most feasible and simplest method was the one universally recognized in the eye of the law long before the adoption of our Constitution, namely, give all entitled to vote an opportunity to exercise this privilege, and then combine or aggregate the whole number of votes upon a given proposition or measure submitted to the electors of a district or locality, such combined vote to be taken or accepted upon any given proposition for all



practicable purposes as comprising the whole number of the electors of the particular district or locality. This method of measuring the whole number is the one, as the authorities disclose, generally adopted, except where a different one is expressly prescribed. In such cases the non-voting must be counted as willing to be bound by the action of the majority who did vote upon the particular proposition, or, in other words, they may be considered as tacitly assenting to the result of those voting, and in this manner or by this method all of the electors of the district, or State, as the case may be, are taken into account.

The method which I have indicated must in reason be the one which the Constitution contemplates shall be adopted or provided by the legislature, in submitting proposed amendments for ratification, and the test by which the majority necessary for ratification shall be determined is to consider alone the majority of the combined or aggregate vote cast for and against the ratification of each amendment. In this view I am supported by Section 2 of Article 16 which requires that the amendment or amendments shall be submitted in such a manner that the electors shall vote for or against each amendment separately. This provision would seem to be a positive command that the electors exercising the right to vote thereon shall vote for or against each of them separately and distinct from the others. Why was this required if the whole number of the electors was not to be tested by the combined affirmative and negative vote cast separately on each amendment, but, as contended, must be ascertained by the highest number of votes cast at the same time upon some other proposition?—In my opinion there can be no sufficient reason advanced for asserting that those who molded and ratified the Constitution of this State, intended by the provision in question to change the well settled policy or mode so universally recognized, by allowing electors, who from indifference, or otherwise, decline to express any choice upon the ratification or rejection of an amendment to the Constitution, to be counted, the same as those who took an interest therein and evinced such interest by voting pro or con thereon. The Constitution surely does not contemplate that the silent, passive, or non-voting electors upon a proposed amendment shall be counted or considered in estimating the number of electors, or the majority essential to its ratification. Evidently the clause “a majority of said electors” was intended to mean such electors as saw proper to exercise the right of suffrage and actually cast their votes for or against a proposed amendment.



It is insisted that the election at which the amendment was submitted was a general election and that it was submitted to the electors of the State to be voted upon at and as a part of said general November election, and hence the returns of the votes cast thereon cannot alone be accepted, but that the court must go beyond and look to the returns in respect to said general election, and thereby it is asserted that it will be shown that a majority voting at the general election for Governor or other candidates on the State ballot did not vote upon the proposition of ratifying or rejecting the amendment. It, however, can not be successfully asserted that the amendment was submitted to the people to be voted upon at and as a part of the general election of 1900. It was submitted under a special act of the legislature enacted solely for that purpose, and the votes cast for and against it can not be said to have been cast at a general election. The proposition to ratify the amendment was neither upon the State nor local ballots used for voting at the general election, but was, as provided by the act of 1899, printed upon ballots which were separate and distinct from all other ballots used at said general election. To all intents and purposes the vote directed by the act of 1899 to be taken upon the adoption or rejection of the proposed amendments was under that law a special election, as much so as though the act had fixed the 7th day of November, 1900, the day following the general election, for a vote to be taken on their adoption or rejection, and had further provided that it should be held at the same precincts and by the same election officers who held the general election on the previous day. Had the legislature intended that the amendment should be submitted at a general election, and as a part thereof, it would have provided that it be submitted under that section of our general election law in respect to constitutional amendments which is as follows: "Whenever any constitutional amendment or other question is required by law to be submitted to popular vote, if all the electors of the State are entitled to vote on such question, the State Board of Election Commissioners shall cause a brief statement of the same to be printed on the State ballots, and the words 'yes' and 'no' under the same, so that the elector may indicate his preference by stamping (marking) at the place designated in front of either word. \*\*\* In case any elector shall not indicate his preference by stamping (marking) in front of either word, the ballot as to such question shall be void and shall not be counted." §6258 Burns 1894. The act of 1899 under which the amendments were submitted among other things pro-

vided that they should be printed on ballots of white paper and should be designated as "Amendment No. 1", and "Amendment No. 2", and on the ballot to the left of each separate amendment should be the words, "For the amendment," and underneath the words "Against the amendment," and directed that "the voter shall make a cross with a blue pencil in the square to the left of whichever set of words he desires to vote." One of these ballots as the act directed was to be delivered to each of the electors before entering the election booth in the manner now provided by law. The act further provides that the election shall be governed by the laws controlling elections "except as hereinafter provided." Section 2 after providing for the return to the Secretary of State of the total vote given for and against each amendment, etc., provides: "If it shall appear that a majority of all the votes cast at such election were given in favor of the adoption of either or both of said proposed constitutional amendments, the Governor shall make proclamation, and it or they shall then become part of the Constitution of the State of Indiana."

... If they did not under the circumstances avail themselves of the right to vote, or exercise a choice in the manner provided by law, it must be considered, when tested by the rule herein asserted, that those who did not express a choice upon the amendments, or expressed a choice only as to one and not as to the other amendment, must by their action be deemed to have affirmatively declined to do so, and in effect may be said to have thereby declared that they were willing to assent to the expressed will of the majority who voted upon each amendment.

... The act in question provides in effect that if it shall appear that "a majority of all the votes cast at such election" upon either amendment was in its favor, it shall then become a part of the Constitution. That is the usual and ordinary test or criterion, as I have shown, and the one which the legislature had the power to provide, and that is the test or evidence of the ratification of the amendment by which this court in this case should be controlled. It appearing that the amendment in controversy having received a majority of all the votes cast for and against it at the time designated by the statute for a vote to be taken thereon, it was, therefore, duly ratified by the electors of the State, and has become a part of the Constitution of the State of Indiana.

The extreme views and conclusions announced in the prevailing opinion of the court, in respect to the interpretation to be placed upon the particular clause of the Constitution, are, in my

opinion, not in harmony with its meaning, neither are they justified by the canons which control the construction of constitutional law. The decision is to be regretted, as it will materially hinder, or render it an extremely difficult matter in the future to make the needed changes in our fundamental law. The holding therein to the effect that although the amendments had each received a large majority of the votes cast thereon, still they must be considered as rejected, and hence cannot be resubmitted for the reason that they did not receive a majority of all the votes cast at the general election for Governor, is not warranted by the Constitution, and militates against sound reason. The decision in this respect goes beyond the holding in *State v. Swift*, 69 Ind. 505, as it was there held that the amendment involved was ineffectual for want of the constitutional majority, but that the legislature might resubmit it to the electors of the State. The Constitution does not limit the submission to any particular legislature, but simply declares that it shall be the duty of the General Assembly to submit, etc. The power is a continuing one in the legislature, and while it may be said that it is the duty of the legislature which has finally agreed to the amendment to submit it, still if not properly submitted, or if the people neither ratify nor expressly reject it by their votes cast thereon, it may be resubmitted. I conclude that the judgment ought to be affirmed.

#### THE SIXTY-SECOND GENERAL ASSEMBLY (1901).

In the 62d session of 1901, there were 33 Republicans and 17 Democrats in the Senate, and 61 Republicans and 39 Democrats in the House. The two amendments which had been submitted to the electors at the general election in November, 1900, had failed to receive a majority of all votes cast at the election, and hence, according to the *Denny* case of 1900, they were rejected and no legal obstruction existed to the submission of new amendments. In order to dispose of these rejected amendments it was necessary to resubmit them to the people, and measures were proposed accordingly. Unsuccessful attempts were also made to secure the adoption of amendments fixing the term of county officers, authorizing the use of voting machines, extending the right of suffrage to women, and providing a method of re-districting the State, and providing for municipal home rule. One bill was also considered providing for the call of a constitutional convention.

#### 466. Membership of Supreme Court (February 4, 1901).

The amendment fixing the membership of the Supreme Court was introduced in the Senate on February 4 by Mr. E. S. Crumbaker, a Republican, and referred to the Committee on the Judiciary. On February 6 the com-

mittee returned a favorable report, and on March 4, the resolution was adopted by a vote of 27-15, and passed the House on March 8 by a vote of 51-19.

[*House Journal, Sixty-second Session, 1147*].

Engrossed Senate joint resolution No. 4 to amend Section 2 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 of Article 7 of said Constitution to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five nor more than eleven judges, a majority of whom shall form a quorum, and they shall hold their office for six years if they so long behave well. Any vacancy caused by death or resignation shall be filled by the Governor as is now provided by the Constitution; but any increase in the number of judges shall not be filled by appointment, but by election at the next general election after any increase is ordered.

#### 467. Qualifications to Practice Law (February 4, 1901).

The lawyers amendment was introduced in the Senate on February 4, by Mr. E. S. Crumbaker and passed on February 20 by a vote of 41-4; it was adopted by the House on March 8 by a vote of 69-3.

[*House Journal, Sixty-second Session, 1780*].

Engrossed Senate joint resolution, No. 5: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of the State chosen at the next general election.

Section 1. The General Assembly shall by law prescribe what qualification shall be necessary for admission to practice law in all courts of justice.

#### 468. Term of County Officers (January 15, 1901).

The amendment, repeatedly considered, fixing the terms of county officers at four years, was introduced in the Senate on January 15, by Mr. Royal Purcell, a Democrat, and referred to the Committee on Revision of the Constitution, but was never reported back to the Senate.



[*Senate Journal, Sixty-second Session, 83*].

Senate joint resolution No. 1, which is as follows: A joint resolution to amend Section 2 of Article 6 of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 6 of said Constitution to read as follows:

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general election, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, surveyor and county assessor, who shall continue in office for four years, and shall not be eligible to re-election to any of said offices in any period of eight years.

#### 469. Voting Machines (January 15, 1901).

A law had been passed in 1899 authorizing the use of voting machines. During the session of 1901, this act was repealed and another, House bill No. 52, more comprehensive in its scope, was passed and approved on March 15. One other bill, No. 408, was introduced in the House, and one, No. 340, in the Senate. In order to insure the constitutionality of this measure, which was in doubt, an amendment was proposed in the Senate on January 15, authorizing the use of voting machines, and referred to the Committee on Revision of the Constitution, but never reported back.

[*Senate Journal, Sixty-second Session, 84*.]

Senate joint resolution No. 2, as follows:

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That the following amendment to the Constitution of the State of Indiana be, and the same is now hereby agreed to and referred to the General Assembly of the State, to be chosen at the next general election, to-wit: Amend Section 13 of Article 2 of said Constitution to read as follows:

All elections by the people shall be by ballot or by such other method as may be prescribed by law: *Provided*, That secrecy in voting be preserved; and all elections by the General Assembly, or by either branch thereof, shall be viva voce.

Sec. 2. *Resolved*, That in submitting this amendment to the electors of the State to be voted on, it shall be designated as Amendment No. 1.



**470. Woman Suffrage (February 5, 1901).**

An amendment conferring the right of suffrage on women, was introduced in the House on February 5, by Mr. E. E. Neal, a Republican, and referred to the Judiciary Committee. On February 21, on recommendation of the committee, the resolution was concurred in. On February 27, the resolution failed to pass the House for want of a constitutional majority, the vote being 49-33. On March 5, the resolution was taken up for consideration, and passed by a vote of 52-32, and the vote by which the resolution was adopted was reconsidered and the motion laid on the table. The resolution was referred to the Senate on March 6 and referred to the Committee on Revision of the Constitution. On March 7 an unsuccessful attempt was made to withdraw the joint resolution from the committee and no further action was taken.

[*Senate Journal, Sixty-second Session, 1195.*]

Engrossed joint resolution No. 1 to amend Section 2 of Article 2 of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 Article 2 of said Constitution to read as follows:

Sec. 2. In all elections, not otherwise provided for by this Constitution, every citizen of the United States, without distinction of sex, of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every person of foreign birth, without distinction of sex, of the age of twenty-one years and upwards, who shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his or her intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he or she may reside, if he or she shall have been duly registered according to law.

**471. Apportionment of State Senators and Representatives (February 7, 1901).**

On February 7, Mr. C. W. Cruson, a Democrat, introduced a resolution in the House proposing a somewhat altered plan for the distribution of senators and representatives. On February 21, on recommendation of the Judiciary Committee, the resolution was indefinitely postponed.

[*House Journal, Sixty-second Session, 706.*]

House joint resolution No. 2 to amend Sections 101 and 102, Article 4 of the Constitution of the State of Indiana.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the State of Indiana be, and the same is now hereby agreed to and referred to the next General Assembly of the State of Indiana, to be chosen at the next general election, to-wit: Amend Section 101, Article 4 of said Constitution, to read as follows:

Sec. 101. No elector shall vote for more than one senator or representative. It shall be the duty of the legislature at the period of redistricting the State for senatorial and representative purpose, to redistrict in such a manner that no elector can vote for more than one senator or representative and the districts shall be so formed that there will be as nearly as possible an equal number of electors in each senatorial and representative district, and the districts shall be of contiguous territory and in as compact a form as possible, but in no case shall a county be divided so as to vote for more than one senator or representative when there are sufficient electors in the county for a senatorial or representative district.

Sec. 102. No county shall be so divided for district purposes that the electors of the county will vote for more than two senators or representatives, except the senators or representatives are to be elected by the vote of the electors within the boundary of the county.

#### 472. Municipal Home Rule (March 4, 1901).

On March 4, Mr. George W. Louttit, a Democrat, introduced a resolution in the House providing for municipal home rule for cities. The amendment proposed to confer on cities the right to frame and adopt their own charters, to amend charters once adopted by means of the referendum, and to enable cities to own and operate their public utilities. The resolution was reported favorably on March 6. On March 9 an unsuccessful attempt was made to suspend the constitutional rule and place the amendment on its final passage, and thereafter the resolution was not considered.

[*Indianapolis News, March 4, 1901.*]

Section 1. Any city or town may frame a charter for itself, on motion of the local legislative authorities, or upon petition of 5 per cent of the legal voters of any city or town, such percentage to be governed by the total vote cast at the last preceding election in

such city or town, to the executive of such city or town, fifteen freeholders, no more than ten of whom shall belong to the same political party, shall be elected to draw up a charter, prescribing the laws, rules and regulations for the government of such city or town, to be submitted to the people at the next general election. Such charter shall be published thoroughly to the citizens of such city or town at least thirty days prior to said election, and if adopted at the polls shall become the organic law of the municipality subject to the constitution and laws of the State under the limitations hereinafter stated.

Sec. 2. Such charter may be amended by referendum vote on the initiative of the executive, or councils or on a petition of a number of voters equal to 5 per cent of the number of votes cast at the last preceding election, to the executive.

Sec. 3. Local franchises and municipal services, such as private corporations may engage in, and all affairs of a purely local business nature, shall be given over to municipal sovereignty, free from State legislative interference. In their relation to State interests, municipalities shall remain fully under the control of the legislature acting through general laws or through such special laws as may be asked for and adopted by a majority referendum vote in the municipality affected.

Sec. 4. It shall be the policy of all cities and towns, so far as practicable, to substitute direct employment, and contracts with coöperative groups of workers, in place of contracts with middlemen and ordinary non-coöperative contracts.

Sec. 5. On a vote of the people to that effect, any city or town may build or buy, own or operate, water, gas, electric, street railway, telegraph or telephone plants to serve the municipality and its inhabitants, or may take such works by lease or contract or purchase, and hold a majority of the stock controlling any such plant or plants.

Sec. 6. Cities or towns, or both, may unite in the purchase, construction, operation, etc., of such plants.

Sec. 7. The executive of any city or town may submit the question referred to in Sections 5 and 6 of this article, at any election, and on petition of 5 per cent of the voters, or request of council or board of trustees, such executive must submit such questions at the next election, first notifying the citizens fully of the matters to be voted upon by thorough publication by at least thirty days before such election.

Sec. 8. Public works shall not be sold or leased except in accord with a referendum vote.

Sec. 9. Cities and towns shall have the right to purchase such plants as enumerated in Section 5 of this article, at the cost of duplication, and may enforce such right by proceedings at law as in taking land for public use by right of eminent domain.

Sec. 10. No political or municipal corporation in this State, except for the purposes of complying and availing themselves of the provisions in Sections 5, 6, 7, 8 and 9, of this article, shall ever become indebted, in any manner for any purpose, to any amount in the aggregate exceeding 2 per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, unless within the aforesaid exception, given by such corporation shall be void. *Provided*, that in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense to such an amount as may be requested in such petition, and move its adoption.

#### 473. Constitutional Convention (February 19, 1901).

On February 19, Senator Will R. Wood, a Republican, introduced a joint resolution providing for the call of a constitutional convention. On February 22, on recommendation of the committee, the resolution was indefinitely postponed.

[*Senate Journal, Sixty-second Session, 699.*]

Concurrent resolution No. 6:

*Be it resolved by the Senate, the House concurring*, That for the purpose of ascertaining the will of the people concerning a constitutional revision of the Constitution of the State of Indiana, at the general election, held in the year 1902, there shall be submitted to the electors of the State of Indiana the question of constitutional revision, and a separate ticket shall be provided by the election commissioners for such election, upon which shall be printed on the right hand side thereof, beneath a circle, "For a constitutional revision," and immediately opposite, on the left hand side of said ticket, beneath a circle, the following: "Against a constitutional revision."

## THE SIXTY-THIRD GENERAL ASSEMBLY (1903).

The 63d session of 1903 was Republican in both Houses. The Senate consisted of 35 Republicans and 15 Democrats, and the House of 66 Republicans and 34 Democrats. The proposed amendments fixing the membership of the Supreme Court and authorizing the General Assembly to prescribe the qualifications for the practice of law, were pending. Neither of the pending amendments was adopted. The lawyers amendment was, however, introduced de novo and adopted. Besides this amendment other amendments were considered, including an elaborate proposal relative to the judiciary, prohibiting the consolidation of railroads, and fixing the terms of county officers at four years. One attempt was made to call a constitutional convention.

**474. Qualifications to Practice Law.**

The pending amendments of the 62d session were ignored, and the lawyers amendment was introduced in the House de novo on January 29, by Mr. Ralph Bamberger, a Republican, and passed on February 13 by a vote of 58-30. The resolution passed the Senate on March 7 by a vote of 33-2.

HOUSE RESOLUTION RELATIVE TO LAWYERS' QUALIFICATIONS  
(JANUARY 29, 1903.)

[*House Journal, Sixty-third Session, 738.*]

Engrossed House joint resolution No. 2, entitled: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election.

Sec. 21. The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

SENATE RESOLUTION RELATIVE TO LAWYERS' QUALIFICATIONS  
(JANUARY 15, 1903.)

A somewhat similar lawyers' qualification amendment was proposed in the Senate on January 15 by Mr. Richard Milburn. According to this proposal no person should be admitted to the practice of law unless he possessed the necessary learning and qualifications, to be prescribed by the Supreme Court. On February 16, the resolution passed the Senate by a vote of 28-6. On February 17, the resolution was referred to the House and was submitted to the Judiciary Committee, but was never reported back.



[*House Journal, Sixty-third Session, 826.*]

Engrossed Senate joint resolution No. 2: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and is referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 21 of Article 7 of the Constitution to read as follows:

Section 21. Every person of good moral character, being twenty-one years of age or over, shall have the right to practice law in all the courts of this State: Provided, He possess the necessary learning and other qualifications that may be prescribed by the highest court of the State.

#### 475. Judiciary (January 16, 1903).

On January 16, Mr. E. A. Dausman introduced a resolution in the Senate proposing to amend the whole of the article on the judiciary. The most important changes proposed fixed the terms of Supreme and circuit judges at twelve years and authorized the creation of one or more judgeships for each circuit. On March 9, the last day of the session, the resolution was reported back without recommendation, and no further action was taken.

[*Senate Journal, Sixty-third Session, 157.*]

Senate joint resolution No. 3, to amend Article 7 of the Constitution of the State of Indiana:

*Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election, viz.:

Amend Article 7 of the Constitution of the State of Indiana by expunging all the sections of said article and in lieu thereof insert the following:

Section 1. The judicial power of the State shall be vested in one Supreme Court, in circuit courts, and in such other inferior courts as the General Assembly may establish.

Sec. 2. The Supreme Court shall consist of not less than three, nor more than five judges, a majority of whom shall form a quorum. They shall hold their offices for twelve years, if they so long behave well.

Sec. 3. The State shall be divided into as many districts as

there are judges of the Supreme Court, and such districts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said judges shall be elected from each district, and reside therein, but said judge shall be elected by the electors of the State at large.

Sec. 4. The Supreme Court shall have jurisdiction coextensive with the limits of the State, in appeals and writs of error under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

Sec. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the court thereon.

Sec. 6. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court made under this Constitution, but no judge shall be allowed to report such decisions.

Sec. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

Sec. 8. The State shall, from time to time, be divided into judicial circuits, and one judge or more for each circuit shall be elected by the voters thereof. Each circuit judge shall reside within the circuit for which he is elected, and shall hold his office for a term of twelve years, if he so long behave well.

Sec. 9. The General Assembly may provide, by law, that the judges of one circuit may hold courts of another circuit in cases of necessity or convenience, and in case of temporary inability of any judge, from sickness, or other cause, to hold courts in his circuit, provision may be made, by law, for holding such courts.

Sec. 10. Any judge who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such manner as may be prescribed by law.

Sec. 11. The judges of the Supreme Court and circuit courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

Sec. 12. No person elected to any judicial office shall, during the term for which he shall have been elected, be eligible to any office of trust or profit under the State, other than a judicial office.

Sec. 13. All criminal prosecutions shall be carried on in the

name and by the authority of the State; and the style of all processes shall be, "The State of Indiana."

#### 476. Consolidation of Railroads (February 23, 1903).

The following proposed constitutional amendment prohibiting the consolidation of inter and intra-state railroads was introduced in the Senate on February 23, and referred to the Judiciary Committee. On February 27, the committee submitted a divided report; the majority report recommended indefinite postponement, the minority report recommended passage. The minority report was rejected by a vote of 13-27.

[*Senate Journal, Sixty-third Session, 874.*]

Senate Concurrent resolution No. 11:

WHEREAS, The last General Assembly of the State of Indiana passed a bill for an act permitting the consolidation of railroad companies, and the same was vetoed by the Governor, and

WHEREAS, There is now pending in this General Assembly a bill for an act, introduced by Senator Gray and known as Senate Bill No. 257, which if enacted into law permits the consolidation of railroad companies organized and incorporated outside of this State with railroad companies organized and incorporated in this State, and

WHEREAS, The consolidation of railroad companies organized and incorporated outside of the State with railroad companies organized and incorporated in the State, would be a surrender of the sovereign right of the State of Indiana over said railroad companies, and the deprivation of the courts of the State of Indiana of the right of jurisdiction over said railroad companies therefore be it

*Resolved by the General Assembly of the State of Indiana, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Add the following section after Section 14 Article 2 of said Constitution:*

Sec. 14. The consolidation of any and all railroad companies, either in or outside this State, is hereby prohibited.

#### 477. Terms of County Officers (February 23, 1903).

The much-mooted amendment relative to the terms of county officers was introduced in the House on February 23 by Mr. David D. Corn, a Democrat. Following is the form in which the resolution was originally presented.

## AMENDMENT AS ORIGINALLY PROPOSED (FEBRUARY 23, 1903).

[*House Journal, Sixty-third Session, 317.*]

House joint resolution No. 1, entitled: A joint resolution to amend Section 2 of Article 6 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and is referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 of Article 6 of the Constitution to read as follows:

Sec. 2. There shall be elected in each county by the voters thereof, at the time of holding the general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor; all such officers shall continue in office four years, and no person shall be eligible to any of such offices for more than four years in any period of eight years.

## AMENDMENT AS AMENDED (FEBRUARY 27, 1903).

On February 27, the resolution was amended by the addition of the following section, and was not subsequently considered.

[*House Journal, Sixty-third Session, 1140.*]

Sec. 3. The salary or emolument of any office under the laws of the State of Indiana shall not be increased or diminished so as to apply to any person in office, or who has been elected to an office but whose term has not begun.

**478. Constitutional Convention (February 12, 1903).**

On February 12, Senator James T. Layman, a Republican, introduced a bill to provide for the calling of a constitutional convention. The bill was referred to the Judiciary Committee and reported favorably; subsequently the bill was recommitted to the same committee and on February 24 the following substitute was reported, but no subsequent action was taken.

[*Senate Journal, Sixty-third Session, 911.*]

Substitute for Senate bill No. 314: A bill for an act to provide for submitting to the qualified voters of the State, the question whether a convention shall be called to alter, amend, or revise the Constitution of this State, or to adopt a new Constitution of this State in lieu of its present Constitution.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be a vote taken by the people of the State at the next general election to be held upon the first Tues-



day after the first Monday in November in the year 1904, for the purpose of determining the will of the qualified voters of the State respecting the calling of a convention for the purpose of altering, amending, or revising the Constitution of this State, or to adopt a new Constitution. For the procuring and preparation of tickets in the counties for the said election, the clerk of the circuit court shall cause to be printed on white paper two times the number of ballots that there were votes cast in the county for Governor by all political parties at the general election in the year 1900, the following question, to wit:

"Shall a convention be called to alter, amend, or revise the Constitution of Indiana, or adopt a new Constitution?"

Said question shall be printed upon all ballots and underneath the same shall be printed the words "For the constitutional convention." All ballots in which the said words "For the constitutional convention" shall not have been erased by the voter shall be counted as favoring the convention. In the event that a voter shall desire to vote against such convention, he shall erase the words "For the constitutional convention." Such ballots shall be delivered to the election precincts in the same manner as ballots for voting for the district and county officers are now delivered, and they shall be delivered to the voters before entering the election booth in the manner now provided by law for delivering the ballots for the voters; and the election board will count out such ballots in the same manner as they count out the votes cast for the district and county officers; and the election shall be held and in all respects governed by the laws governing elections, except as in this act otherwise provided, but the inspector of election or the judge acting in his place shall receive no ballot, whether for State, county or other offices, unless there shall be handed to him duly folded as required by law for depositing in the ballot box, said ballot containing the question in this act provided for, relative to the calling of a constitutional convention, and if any voter fail or refuse to deliver to such inspector the ballot referring to said constitutional convention, the inspector shall see that such a ballot is furnished to the voter for the purpose of voting upon said question; and upon his continuing to refuse to vote, such inspector shall refuse to accept any ballot offered by the said voter.

Sec. 2. After the returns are tabulated and counted, the clerk of the circuit court shall certify under the seal of his office, to the Secretary of State the total vote upon said question as to the calling of a constitutional convention, both votes against it and for



the same; and when the Secretary of State shall have tabulated the same from all of the counties in the State, he shall certify to the Governor the total vote cast for said convention and the total vote cast against said convention.

Sec. 3. It shall be the duty of the Governor to lay before the next General Assembly all the returns by him received and certified as provided in this act.

#### 479. *Ex Parte Decisions of Supreme Court (January 12, 1903).*

On January 12, Senator Albert D. Ogborn introduced a bill, No. 65, authorizing either house of the General Assembly to submit pending measures to the Supreme Court to ascertain their constitutionality in advance of their passage. On February 13, the committee submitted a divided report. The minority report, recommending passage, was indefinitely postponed by a vote of 33-14, and the majority report recommending indefinite postponement was concurred in.

*[Senate Journal, Sixty-third Session, 87.]*

Senate bill No. 65, entitled: A bill for an act authorizing the submission, by the General Assembly, or either house thereof, to the Supreme Court the question of the constitutionality of any bill or measure pending therein, and regulating the force and effect of the determination of the court thereon, and declaring an emergency.

#### 480. *Municipal Referendum (January 26, 1903).*

A quasi-constitutional question, providing for the referendum on municipal questions, was embodied in a bill, No. 195, introduced in the Senate on January 26, reported favorably on February 24, but never advanced beyond second reading.

*[Senate Journal, Sixty-third Session, 243.]*

Senate bill No. 195, entitled: A bill for an act entitled An act vesting a right in the voters of any incorporated city in the State of Indiana, to, by petition, refer any ordinance, agreement, contract or measure enacted or proposed by the common council of any incorporated city of this State, to a vote of the voters of such city, and to reject the same by ballot, to prescribe the manner of holding such election, and provide punishment for all offenders against the provisions of this act, and declaring an emergency.

#### THE SIXTY-FOURTH GENERAL ASSEMBLY (1905).

In the 64th session of 1905, the Senate consisted of 36 Republicans and 14 Democrats, and the House of 79 Republicans and 21 Democrats. The amendment authorizing the General Assembly to prescribe the qualifications to practice law, which was pending from the 63d session, was adopted and submitted to the people for ratification. Amendments proposed and rejected

provided that a tax receipt should be required of all persons offering to vote; that the term of an incumbent in office should neither be increased nor diminished during the term for which he was elected, nor the fees or salary increased or diminished; and fixing the number and tenure of Supreme judges.

#### 481. Qualifications to Practice Law.

The lawyers amendment was introduced in the House on February 1, by Mr. Jesse E. Wilson, a Republican, and passed on February 23 by a vote of 51-24. The resolution passed the Senate on March 3 by a vote of 34-0.

#### HOUSE RESOLUTION (FEBRUARY 1, 1905).

[*House Journal, Sixty-fourth Session, 1453.*]

Engrossed House joint resolution No. 2: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the electors of the State of Indiana at the next general election:

Sec. 21. The General Assembly shall, by law, prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

#### SENATE RESOLUTION (JANUARY 30, 1905).

The same amendment was introduced in the Senate on January 30. On February 24, the resolution came up for third reading and was temporarily postponed; in the meantime, the House resolution passed and the Senate resolution was not subsequently considered.

[*Senate Journal, Sixty-fourth Session, 575.*]

Senate joint resolution No. 3 to amend Section 21 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election.

Sec. 2. The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

**482. Qualifications of Voters—Tax Receipts and Education (January 12, 1905).**

On January 12, Senator L. Ertus Slack introduced a resolution proposing an amendment to the Constitution providing for permanent registration records, and requiring persons admitted to registration to be able to read the English language, and requiring all persons to present a tax receipt before they were admitted to exercise the right of suffrage. On February 1, an attempt was made to amend the resolution by striking out the word "male," thus conferring the right of suffrage on women; this motion was lost by a vote of 20-27. The resolution was then indefinitely postponed by a vote of 32-13.

[*Senate Journal, Sixty-fourth Session, 304.*]

Joint Senate resolution No. 1 to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be and the same is now agreed to, and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 Article 2 of said Constitution, to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law, and shall have paid on or before the first Monday in May of the year in which he desires to vote the poll tax then assessed to him, for which he shall produce the receipt, on demand of an official challenger or a member of the election board. The General Assembly shall make provision by law for the permanent registration by wards and townships, by nonpartisan boards of registrars, before January 1, 1909, of all persons then entitled to vote under the provisions of the Constitution as in force January 1, 1905. No voter so registered shall be required to register there-

after, except in case of change of residence, or temporary disfranchisement. Provision shall be made by the General Assembly for the annual purging of the registry lists by the removal of the names of voters who have died, removed from the county, or have been legally disfranchised, and for appeal to the courts from the decision of the registrars. After January 1, 1909, every person presenting himself for registration, shall be able to read and write any section of the Constitution of the United States in the English language, and shall make demonstration of such ability, on demand of any registrar. And persons so admitted to registry shall be placed on the permanent register, with the same rights as those originally registered.

The same resolution was introduced in the House on February 9 by Mr. Zach M. Seifres, a Democrat; reported unfavorably by the committee on February 16, and postponed indefinitely on February 20.

#### 483. **Tenure, Fees and Salaries of Public Officers (February 7, 1905).**

Mr. William Morton, a Republican, introduced a resolution in the House on February 7, proposing an amendment to the Constitution whereby the General Assembly would be prohibited from extending or abridging the term of any officer then holding, or from increasing or diminishing his fees or salary. On February 9, the committee reported unfavorably, and on February 14 the resolution was indefinitely postponed.

[*House Journal, Sixty-fourth Session, 1134.*]

House joint resolution No. 3, to amend Section 2 of Article 15 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the State of Indiana be and the same is now hereby agreed to, and is referred to the General Assembly of said State to be chosen at the next general election following the adoption hereof: Amend Section 2 of Article 15 of the Constitution of the State of Indiana to read as follows:

Sec. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than for four years. And the General Assembly shall not, in fixing the tenure of any office or the beginning or ending of the term of any office, either extend or shorten the term of any officer then holding or elected to hold any such office. Neither shall the General Assembly

increase, decrease or change the salary or fees of any officer so as to increase, decrease or change the salary of any officer then holding or elected to hold any such office.

**484. Membership and Tenure of Judges (February 15, 1905).**

An amendment designed to fix the number of Supreme judges at five and their tenure of office at twelve years, and the tenure of circuit judges at from six to twelve years, was introduced in the House on February 15 by Mr. Vincent G. Clifford, a Republican, and was indefinitely postponed on February 20.

*[House Journal, Sixty-fourth Session, 1159.]*

House joint resolution No. 6, entitled: A joint resolution to amend Sections 2 and 9 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendments to Article 7 of the Constitution of the State of Indiana be and the same are now agreed to and referred to the General Assembly of the State of Indiana, to be chosen at the next general election: Amend Section 2 of Article 7 of the Constitution to read as follows:

Sec. 2. The Supreme Court shall consist of five judges, a majority of whom shall form a quorum; they shall hold their offices for twelve years, if they so long behave well.

Amend Section 9 of Article 7 of the Constitution to read as follows:

Sec. 9. The State from time to time shall be divided into judicial circuits and a judge or judges for each circuit shall be elected by the voters thereof; circuit judges shall reside within the circuit, and shall hold office for a term fixed by the General Assembly if they so long behave well. The terms of all judges excepting those of the Supreme Court shall be fixed by the General Assembly, and shall be not less than six years nor more than twelve years, provided that it shall not be within the power of the General Assembly to shorten a judicial term once fixed by law.

**485. Referendum on Questions of Public Policy (February 15, 1905).**

A bill of unusual interest, of a quasi-constitutional character, was presented in the Senate by Mr. L. Ertus Slack on February 15. This bill was designed to provide for the ascertaining of the opinion of the voters on questions of public policy. It was rejected on March 6 by a vote of 17-19.

*[Senate Journal, Sixty-fourth Session, 1077.]*

Senate bill No. 314. A bill for an act providing for an expression of opinion by electors on questions of public policy at any general or special election.



#### 486. Republican Platform of 1906—Approves Lawyers Amendment (April 11, 1906).

The Republican State Convention, assembled in Indianapolis on April 11, 1906, adopted the following resolution approving the pending lawyers amendment to the Constitution.

*[Indianapolis Star, April 12, 1906.]*

We favor the adoption of the amendment to the State Constitution to be submitted at the coming election, authorizing the legislature to regulate the qualifications for admission to the bar.

#### THE SIXTY-FIFTH GENERAL ASSEMBLY (1907).

The Republicans continued their control of the 65th session of 1907. There were 37 Republicans and 13 Democrats in the Senate and 54 Republicans and 45 Democrats in the House. The lawyers amendment which had been submitted to the people at the November election of 1906 failed to obtain a majority of the votes cast at that election, and hence, according to the latest court decision, in the Denny case, had been rejected and no obstruction existed to the submission of the same or other amendments. Accordingly the lawyers amendment was re-adopted and submitted to the General Assembly of 1909 for consideration. Other amendments proposed and rejected, included constitutional changes designed to secure compulsory registration, and the production of a poll tax receipt before voting, to fix the number of judges of the Supreme Court, to extend the duration of a regular legislative session to 100 days, to require aliens to be fully naturalized before voting, and to prohibit the issuance of licenses to sell intoxicating liquors. The question of woman suffrage was given prominent consideration, although no constitutional amendments on that subject were proposed. A bill was introduced in each house prescribing the qualifications of women to hold office (H. B. No. 43, and S. B. No. 91). Both were indefinitely postponed. A bill was introduced in each house conferring on women the right to vote at all municipal elections. (S. B. No. 285, and H. B. No. 575). The Senate bill failed of adoption by a vote of 24-22, and the House bill was on the second reading at the close of the session. Two other House bills on the same general subject were presented. H. B. No. 487 was designed to protect women citizens of the State in the exercise of suffrage, and H. B. No. 500 was intended to extend to women the right to vote for presidential electors. Both bills were reported favorably but were not advanced beyond engrossment. On February 6, there was a joint session of the two Houses to listen to an address by Helen M. Gougar on questions relating to woman suffrage, and on February 16 a petition was presented to the House praying the General Assembly "to submit to the electors of the State an amendment to the Constitution striking out the word 'male' as a qualification for suffrage."

#### 487. Qualifications to Practice Law.

The lawyers amendment was introduced in the Senate on March 9 by Mr. Martin M. Hugg, a Republican, and passed under suspension of the rules

by a vote of 45-0. This resolution does not appear of record in the House and was superseded by Senate joint resolution No. 10. Senate joint resolution No. 9 as introduced in and passed by the Senate was as follows:

RESOLUTION AS ORIGINALLY INTRODUCED (MARCH 9, 1907).

[*Senate Journal, Sixty-fifth Session, 2417.*]

Senate joint resolution No. 9 to amend Section 21 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election.

Sec. 2. The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

RESOLUTION AS FINALLY ADOPTED (MARCH 11, 1907).

On March 11, Senator Hugg introduced the same resolution in a somewhat altered form. Under suspension of the rules, the resolution was adopted by a vote of 42-2. The resolution passed the House the same day by a vote of 52-22.

[*House Journal, Sixty-fifth Session, 2390.*]

Engrossed Senate joint resolution No. 10: Whereas, a joint resolution was adopted by the General Assembly of 1903 and 1905, which was in the words and figures, as follows: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendments to the Constitution of said State be, and the same is now agreed to and referred to the electors of the State of Indiana at the next general election:

Sec. 21. The General Assembly shall, by law, prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

And whereas the amendment to the Constitution provided for by such joint resolution was submitted under said joint resolution to the voters of the State of Indiana at the general election in 1906, and although receiving more than three-fourths of the vote cast upon it, failed for want of a constitutional majority; be it

*Resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said

State be, and the same is now agreed to and referred to the electors of the State of Indiana at the next general election:

Sec. 21. The General Assembly shall, by law, prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

And be it further resolved that the State Board of Election Commissioners be directed to print said amendment upon the official State ballots to be voted upon at the next general election, as provided by law.

**488. Compulsory Registration and Poll Tax for Suffrage (January 11, 1907).**

On January 11, Senator L. Ertus Slack introduced his resolution of the preceding session requiring all voters to register, to produce a poll tax receipt and to be able to read the English language. On February 6, the resolution failed to pass the Senate for want of a constitutional majority, the vote being 21-18. On February 7, Senator Slack called up the resolution again and it failed of passage a second time, the vote being 23-19.

[*Senate Journal, Sixty-fifth Session, 135.*]

Senate joint resolution No. 1, entitled: A joint resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election: Amend Section 2 Article 2 of said Constitution to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution every male citizen of the United States of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law, and shall have paid on or before the first Monday in

May of the year in which he desires to vote, the poll tax then assessed to him, for which he shall produce the receipt on demand of an official challenger or a member of the election board. The General Assembly shall make provision by law for the permanent registration by wards and townships, by nonpartisan boards of registrars, before January 1, 1911, of all persons then entitled to vote under the provisions of the Constitution as in force January 1, 1907.

No voter so registered shall be required to register thereafter except in case of change of residence or temporary disfranchisement. Provision shall be made by the General Assembly for the annual purging of the registry lists by the removal of the names of voters who have died, removed from the county or have been legally disfranchised, and for appeal to the courts from the decision of the registrars. After January 1, 1911, every person presenting himself for registration shall be able to read and write any section of the Constitution of the United States in the English language, and shall make demonstration of such ability on demand of any registrar. Any person so admitted to registry shall be placed on the permanent register with the same rights as those originally registered.

#### 489. Membership of Supreme Court (March 11, 1907).

On March 11, the last day of the session, two resolutions were proposed in the Senate by a committee consisting of Linton A. Cox and Ezra Mattingly, Republicans, and Evan B. Stotsenburg and Frank M. Kistler, Democrats, proposing to amend the Constitution so as to increase the membership of the Supreme Court to a minimum of five and a maximum of eleven judges, and extending the term of a regular session of the General Assembly to 100 days. The Supreme Court amendment passed, under suspension of the rules, by a vote of 40-4. For lack of time, the House took no action.

[*Senate Journal, Sixty-fifth Session, 2465.*]

Senate joint resolution No. 11 as follows: A joint resolution to amend Section 2 of Article 7 of the Constitution of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana, That the following proposed amendment to the Constitution of the State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election.*

Sec. 2. That Section 2 of Article 7 of the Constitution of the State of Indiana be amended so as to read as follows:

Sec. 2. The Supreme Court shall consist of not less than five



nor more than eleven judges, a majority of whom shall constitute a quorum. They shall hold their offices for six years if they so long behave well.

**490. Duration of Regular Legislative Sessions (March 11, 1907).**

The resolution extending a legislative session to a period of 100 days was introduced at the same time as the foregoing Supreme Court amendment, and passed the Senate, under suspension of the rules, by a vote of 34-0. The House took no action on this measure.

[*Senate Journal, Sixty-fifth Session, 2466.*]

Senate joint resolution No. 12 to amend Section 29 of Article 4 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election.

Sec. 2. That Section 29 of Article 4 of the Constitution of the State be amended so as to read as follows:

Sec. 29. The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly except the first under the Constitution shall extend beyond the term of one hundred days nor any special session beyond the term of forty days.

**491. Naturalization as a Qualification for Suffrage (January 15, 1907).**

On January 15, Mr. R. C. Brown, a Democrat, introduced a resolution in the House proposing an amendment to the Constitution by virtue of which an alien would be required to be fully naturalized and reside in the State six months before voting. On February 1, on recommendation of the committee, the resolution was indefinitely postponed.

[*House Journal, Sixty-fifth Session, 155.*]

House joint resolution No. 1 to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State, be, and the same is now agreed to, and referred to the General Assembly of said State, to be chosen at the



next general election: Amend Section 2 Article 2 of said Constitution to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election; and every male of foreign birth of the age of twenty-one years and upwards, who shall have become a naturalized citizen of the United States, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

#### 492. Prohibition of Liquor Traffic (February 22, 1907).

On February 22, Mr. William Morton, a Republican, introduced an amendment in the House declaring it unlawful to grant a license to sell intoxicating liquors in the State. The resolution was introduced in the following form.

ORIGINAL FORM OF HOUSE RESOLUTION (FEBRUARY 22, 1907).

[*House Journal, Sixty-fifth Session, 1477.*]

A joint resolution to amend the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the said State, be, and the same is now agreed to and referred to the electors of the State of Indiana at a special election to be called on the first Monday of November, 1907.

Sec. 2. That it shall be unlawful to grant a license for the sale of spirituous, vinous or malt or other intoxicating liquors by any authority of the State of Indiana, and that it shall be unlawful to sell any such spirituous, vinous, malt or other intoxicating liquors to be drank as a beverage.

FORM OF RESOLUTION AS REPORTED BY COMMITTEE  
(MARCH 2, 1907)

On March 2, the Committee on Public Morals, to which the resolution had been referred, reported the resolution in the following form, and it was not subsequently considered.

[*House Journal, Sixty-fifth Session, 1942.*]

Strike out all after the enacting clause and in lieu thereof insert the following:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of the said State, be and the same is now agreed to, and is referred to the General Assembly of said State to be chosen at the next general election following the adoption thereof.

Sec. 2. No person, persons, association or corporation shall manufacture, import, keep for sale or offer for sale, gift, barter, or trade any intoxicating liquors as a beverage within this State. The General Assembly shall provide for the enforcement of this article by law and provide suitable penalties for the violation thereof.

#### 493. Constitutional Convention (January 14, 1907).

Two attempts were made during the 65th session to call a constitutional convention, both unsuccessful. On January 14, Senator Evan B. Stotsenburg, a Democrat, introduced a bill to provide for the call of a constitutional convention. On February 21, the Committee on Constitutional Revision, to whom the measure had been referred, reported favorably. On February 25, the bill was advanced to engrossment and not subsequently considered.

[*Senate Journal, Sixty-fifth Session, 149.*]

Senate bill No. 76. A bill for an act to provide for taking the sense of the qualified voters of the State of Indiana on a call of a convention to alter, amend or revise the Constitution of this State.

A second bill, providing for the call of a constitutional convention, was introduced on January 16 by Senator Will R. Wood, a Republican. On January 24, the bill was reported favorably. On February 8, after several amendments were made, the bill passed the Senate by a vote of 35-7 and was transmitted to the House. On February 11, a motion was made to reconsider the vote on the passage of this bill, but no action was taken at the time. On February 13, the motion was called up and the motion to reconsider the vote prevailed by a vote of 29-19. The bill was returned from the House. On February 20, the bill was made the special order for March 11, the last day of the session, but it was not considered at that time.

[*Senate Journal, Sixty-fifth Session, 185.*]

Senate bill No. 142. A bill for an act concerning a constitutional convention.

**494. Method of Submitting Amendments (February 12, 1907).**

On February 12, Mr. J. Monroe Fitch, a Republican, introduced a bill in the House prescribing a method for the preparation of ballots for the submission of proposed constitutional amendments. The bill passed the House on March 1, by a vote of 51-22. On March 8, the bill passed the Senate by a vote of 34-2. On March 9, the bill was amended and passed the Senate a second time by a vote of 33-1, and on March 11, the House concurred in these amendments (See Documents Nos. 503 and 508).

**495. Republican Platform of 1908—Increase in Salaries of Public Officials (April 2, 1908).**

The Republican State Convention, assembled in convention in Indianapolis on April 2, 1908, adopted the following resolution relative to the increase in the salaries of public officials.

*[Indianapolis Star, April 3, 1908.]*

We are opposed to the increase of the salary of any public officer in the State for the term of office for which he has been nominated or elected; and we favor the enactment of an amendment to the Constitution of the State of Indiana prohibiting any such increase; and until the adoption of such amendment we declare it to be the fixed policy of the Republican party to oppose any such increase.

**THE SPECIAL SESSION OF 1908 (SEPTEMBER 18 TO SEPTEMBER 30).**

The special session of 1908 was called to enact a county local option law. It was convened on September 18, two months prior to the election, and hence the personnel was the same as that of the General Assembly of 1907. The calling of a special session to enact a more stringent prohibitory law aroused a State-wide interest in the cause of temperance, and petitions signed by upwards of 30,000 voters, were presented in the House and Senate asking for the adoption of a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors within the State. Similar petitions were presented by the Woman's Christian Temperance Union of Indiana, by the Intercollegiate Prohibition Association of De Pauw University, the local chapters of the Woman's Christian Temperance Union of Franklin and Nappanee and the Western Yearly Meeting of Friends' Church, representing 16,000 members. As a result of these demands, a resolution was introduced proposing an amendment to the Constitution forever prohibiting the manufacture and sale of intoxicating liquors. As some doubt existed whether an amendment could be legally proposed while an amendment was pending, the consideration of the amendment was indefinitely postponed.

**496. State-Wide Prohibition (September 21, 1908).**

The State-wide prohibition amendment, prohibiting the manufacture and sale of intoxicating liquors except for medical, scientific, mechanical and

sacramental purposes, was introduced in the House on September 21, by Mr. Temple G. Pierson, a Democrat. On September 26 a motion was agreed to by a vote of 59-38 "that the joint resolution be referred to a committee of two, to investigate with reference to the constitutionality of the joint resolution, there having been a similar resolution passed two years ago." The joint resolution then passed the House by a vote of 71-28. In order to prevent an adverse reconsideration of the vote at some future date, Mr. Pierson, the author of the resolution, moved to reconsider the vote by which the joint resolution passed and that the motion be laid on the table, which was agreed to. The Senate referred the resolution to the Judiciary Committee "with instructions to investigate and report upon the constitutionality of said resolution." An unsuccessful attempt, lost by a vote of 26-11,\* was made "that the Attorney General of Indiana be requested to furnish this Senate his opinion whether or not under the Constitution of this State, engrossed House joint resolution No. 7 may be acted upon at this special session of the General Assembly." The report of the Judiciary Committee was submitted on September 28. The majority report recommended indefinite postponement, and was signed by Senator Rome C. Stephenson, the chairman of the committee.

MAJORITY REPORT OF COMMITTEE (SEPTEMBER 28, 1908).

[*Senate Journal, Special Session, 1908, 117.*]

Your Committee on Judiciary A, to whom was referred engrossed House joint resolution No. 7, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that the same be indefinitely postponed, for the following reasons:

That a proposed amendment to the Constitution of the State of Indiana has been introduced and is now pending upon the subject of the qualifications necessary to practice law in the Courts of the State, and until that proposed amendment is disposed of no other proposed amendment can be considered, under Section 2 of Article 16 of the Constitution of the State of Indiana, which reads as follows:

If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments which shall have been agreed upon by one General Assembly shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

MINORITY REPORT OF COMMITTEE (SEPTEMBER 28, 1908).

The minority report was signed by Senators L. Ertus Slack and Evan B. Stotsenburg and recommended that the opinion of the Attorney-General be obtained as to the constitutionality of the procedure.

\*((The motion regarding the Attorney-General was tabled by the vote of 26-11 on September 26.))



[*Senate Journal, Special Session, 1908, 118.*]

The minority of your Committee on Judiciary A would respectfully report that they have had under consideration engrossed House joint resolution No. 7, and would report the same back to the Senate with the recommendation that the Attorney-General of the State of Indiana be requested to give to this Senate an opinion whether or not said resolution can be acted upon at the present session of the General Assembly, and further action be deferred until the opinion is obtained by proper resolution of the Senate.

The minority report was rejected by a vote of 12-35, and the majority report was then concurred in. The resolution passed the House in the following form:

ORIGINAL RESOLUTION.

[*House Journal, Special Session, 1908, 33.*]

House joint resolution No. 7: A joint resolution, proposing an amendment to the Constitution of the State of Indiana, by inserting Article 17 forever prohibiting the manufacture, sale, or keeping for sale, in the State of Indiana, spirituous, vinous, malt, and any intoxicating liquors, except for scientific, medical, mechanical, and sacramental purposes, and providing for regulating sales for said purposes.

Section 1. *Resolved, by the General Assembly of the State of Indiana*, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz.: Amend by adding thereto Article 17, so as to read as follows:

Sec. 2. The manufacture, sale, or keeping for sale, in said State, spirituous, vinous, malt liquors, or any intoxicating liquors, except for medical, scientific, mechanical, and sacramental purposes, shall be and is hereby forever prohibited in the State of Indiana.

Sec. 3. The General Assembly of the State of Indiana shall provide by law in what manner, by whom and at what places such liquors shall be manufactured or sold for medical, scientific, mechanical and sacramental purposes.

**497. Approval of Prohibition Amendment (September 28, 1908).**

On September 28, two days after the House had adopted the prohibition amendment, the following resolution of approval was presented in the Senate.

[*Senate Journal, Special Session, 1908, 115.*]

Senator Moore of Putnam offered a resolution adopted by the Methodist Ministerial Association, as follows:



WHEREAS, A resolution submitting to a vote of the people of Indiana an amendment to the State Constitution, prohibiting the manufacture and sale of intoxicating liquor, passed in the House of Representatives last Saturday by a vote of 72 to 28; and

WHEREAS, Said resolution is now pending in the Senate and may be brought up for action in that body this afternoon; therefore, be it

*Resolved*, That the Methodist Ministerial Association of Indianapolis earnestly petitions the Senate to take favorable action on this measure if they shall find there is no constitutional hindrance.

*Resolved*, That a copy of these resolutions be placed in the hands of the presiding officer of the Senate this afternoon.

H. C. CLIPPINGER,

Secretary M. E. Preachers' Association

E. M. CHAMBERS, President.

#### THE SIXTY-SIXTH GENERAL ASSEMBLY (1909).

At the general election of 1908, the Democrats gained the ascendancy in the State. The House consisted of 60 Democrats and 40 Republicans; the Senate, however, which yielded more reluctantly to public sentiment, was composed of 27 Republicans and 23 Democrats. Comparatively few constitutional measures were considered. The lawyers amendment was pending from the preceding session of 1907. This amendment was adopted and submitted to the people at the general election of 1910. Resolutions were also proposed providing that householders whose property did not exceed \$300 in value and the property of the widows and orphans of Civil War veterans not exceeding \$1,000 in value should be exempt from taxation; that the manufacture and sale of intoxicating liquors should be forever prohibited; and that certain changes should be made in the Constitution relative to suffrage and elections. The pendency of the lawyers amendment rendered the introduction, consideration and adoption of additional amendments useless. Two measures of quasi-constitutional importance were considered. House bill No. 463 was designed to provide for the referendum on franchises granted by municipal corporations. Senate bill No. 263 was intended to require all electors at general municipal elections to exhibit a poll tax receipt before voting. Neither of these measures was reported from committee.

#### 498. Governor Hanly Recommends Registration Law (January 8, 1909).

In his message to the General Assembly, delivered on January 8, Governor Hanly recommended the passage of a registration law and adverted indirectly to certain defects in the Constitution relative to alien voters.

*[Senate Journal, Sixty-sixth Session, 55.]*

An unusual influx of persons of foreign birth during the last

five years has raised the question in the minds of thoughtful men of the propriety of extending the time of their residence within the State, before they shall be entitled to exercise the privilege of electors. I am doubtful as to the legality of any such legislation.

The Constitution of the State provides: "Every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law."

The declaration required by the federal statute, and referred to in the section of the Constitution quoted, is as follows:

"He (an alien) shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States and the present place of residence in the United States of said alien."

The federal law seems to require no length of residence in the United States before an alien may declare his intention to become a citizen, and the Constitution of the State seems to provide that any male of foreign birth who has made the declaration required by the Federal law and has lived in the State six months, in the township sixty days and in the ward or precinct thirty days immediately preceding an election, shall be qualified to vote.

I do not believe the General Assembly can add to or take from the qualifications of electors named in the Constitution.

A registration law prepared with care to meet the constitutional objection raised to such registration legislation as has heretofore

been enacted, would go far toward curbing the evil sought to be inhibited. I commend such measure to your consideration.

**499. Qualifications to Practice Law (February 27, 1909).**

The lawyers amendment was introduced in the Senate on January 14, by Mr. Evan B. Stotsenburg and adopted at once by a vote of 44-0. The resolution passed the House on January 21, by a vote of 74-16. See Appendix XI.

[*Laws, 1909, 501.*]

A Joint Resolution concerning the amendment of Section 7 of the Constitution of the State of Indiana.

WHEREAS, a joint resolution was adopted by the general assemblies of 1903 and 1905, as follows: A joint resolution to amend Section 21 of Article 7 of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is now agreed to and referred to the electors of the State of Indiana at the next general election:

Sec. 21. The General Assembly shall, by law, prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

AND, WHEREAS, The amendment to the Constitution provided for by such joint resolution was submitted under said joint resolution to the voters of the State of Indiana at the general election in 1906, and although receiving more than three-fourths (3-4) of the vote cast upon it, failed for want of a constitutional majority;

AND, WHEREAS, The joint resolution hereafter set out was adopted by the General Assembly of 1907, therefore,

*Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to Article 7 of the Constitution of said State be, and the same is now agreed to and referred to the electors of the State of Indiana at the next general election:

Sec. 21. The General Assembly shall, by law, prescribe what qualifications shall be necessary for admission to practice law in all courts of justice.

*And be it further resolved*, That the State board of election commissioners be directed to print said amendment upon the official State ballots, to be voted upon at the next general election, as provided by law.

Approved February 27, 1909.

**500. Tax Exemptions (January 14, 1909).**

On January 14, Senator Nathan B. Hawkins, a Republican, introduced a proposed amendment providing that householders whose property did not exceed \$300 in value, and the widows and orphans of Civil War veterans whose entire property did not exceed \$1,000 in value, should be exempt from taxation. The resolution was indefinitely postponed.

[*Senate Journal, Sixty-sixth Session, 109.*]

**Joint resolution No. 1.**

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of said State, be and the same is hereby agreed to and is referred to the General Assembly of the said State, to be chosen at the next general election and, if the same be adopted by the said General Assembly, that the same shall be submitted to the electors of the State at the succeeding general election. Amend Section 1 of Article 10 of the Constitution of the State of Indiana to read as follows:

Section 1. The General Assembly shall provide by law for a uniform and an equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specifically exempted by law. Household-ers whose entire property does not exceed three hundred dollars in value shall be exempt from all property taxes and the General Assembly may exempt from taxation the property of veterans of the Civil War, widows and orphans in any amount not to exceed the sum of one thousand dollars.

**501. Residence Suffrage Qualifications (January 14, 1909).**

On January 14, Mr. Edward W. Wickey, a Republican, introduced a resolution in the House proposing to amend the Constitution by eliminating all reference to foreigners and requiring citizens to reside in the State one year before acquiring the right to vote. The resolution was referred to the Judiciary Committee and never reported back.

[*Original Resolution.*]

A joint resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of*

*Indiana*, That Section 2 of Article 2 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during one year, and in the county sixty days, and in the ward or precinct thirty days, immediately preceding such election; shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

Sec. 2. That the same be now agreed to and referred to the General Assembly of the State to be elected at the next general election.

#### **502. State-Wide Prohibition (February 26, 1909).**

The amendment forever prohibiting the manufacture and sale of intoxicating liquors, considered at the special session of 1908, was introduced in the House on February 26, by Mr. Henry P. Sicks, a Democrat. The resolution was referred to the Committee on Public Morals and was never reported back to the House.

*[House Journal, Sixty-sixth Session, 1125.]*

Joint resolution No. 7, proposing an amendment to the Constitution of the State of Indiana by inserting Article 17, forever prohibiting the manufacture, sale or keeping for sale, in the State of Indiana, spirituous, vinous, malt, or any intoxicating liquors, except for scientific, medical, mechanical, and sacramental purposes, and providing for regulating sales for said purposes.

Section 1. *Resolved by the General Assembly of the State of Indiana*, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to be submitted to the vote of the electors of said State, viz.: Amend by adding thereto Article 17, so as to read as follows:

Sec. 2. The manufacture, sale, or keeping for sale, in said State, spirituous, vinous, malt liquors, or any intoxicating liquors, except for scientific, medical, mechanical and sacramental purposes, shall be and is hereby forever prohibited in the State of Indiana.

Sec. 3. The General Assembly of the State of Indiana shall provide by law in what manner, by whom and at what places such liquors shall be manufactured or sold for scientific, medical, mechanical and sacramental purposes.



**503. Submission of Constitutional Amendments (January 14, 1909).**

A bill, substantially identical with House bill No. 533 of the preceding session, providing a method for the preparation of ballots for the submission of proposed constitutional amendments was introduced in the House on January 14, but was rejected on February 17, by a vote of 32-60. (See Documents Nos. 494 and 508).

[*House Journal, Sixty-sixth Session, 113.*]

House bill No. 16. A bill for an act prescribing a method for the preparation of ballots for proposed constitutional amendments and providing for the certification of the approval or disapproval of such a proposed amendment by a State convention of any political party, to the Secretary of State, and printing of the action of such State convention on such proposed amendment, as a part of the official ballot of such political party, and providing a method for marking and counting such ballots for the said proposed amendment, and prescribing the method of using voting machines, in voting upon the ratification of proposed amendments to the Constitution.

**THE SIXTY-SEVENTH GENERAL ASSEMBLY (1911).**

The Democrats were largely in a majority in both Houses of the 67th session of 1911. There were 30 Democrats and 20 Republicans in the Senate, and 60 Democrats and 40 Republicans in the House. The lawyers amendment was submitted at the general election of 1910. The total vote of the State was 627,133. The affirmative vote on the proposed amendment was 60,357; the negative vote was 18,494. The amendment was therefore lost for want of a majority, but according to the Denny decision, was still pending and therefore obstructive to other amendments. The most important constitutional measure considered, was the famous Senate bill No. 407, embodying substantially a new constitution, and popularly known as the "Marshall Constitution," because of the energy with which Governor Marshall advocated the measure. The bill became a law, but was declared unconstitutional in *Ellingham v. Dye* before it could be submitted to a vote of the people. Other amendments were proposed and considered but none were adopted. Among these were amendments prescribing the qualifications for suffrage, particularly of aliens; providing that amendments which received a majority of the votes cast on the proposition should be considered adopted; authorizing the General Assembly to enact registration laws applicable to the State generally or to any sub-division thereof; prohibiting the manufacture and sale of intoxicating liquors; providing for the statutory and constitutional initiative and referendum; and authorizing the General Assembly to enact laws to regulate industrial compensation, to compel arbitration and the payment without litigation of claims for personal injuries, sustained by workmen in the course of their employment. Two important measures, involving quasi-constitutional questions, were considered. One of these measures, Senate bill No. 75, provided for the referendum on all ordinances granting franchises in cities and towns, which was finally lost for want of agreement between the two Houses. A second measure, House bill No. 151, was designed to provide for changes in the form of government in cities of the first, second and third classes by a vote of the people. This bill was never matured. The sec-

ond of these measures was Senate bill No. 190, and House bill No. 244, designed to extend the right of suffrage in all city and town elections to women. The Senate bill was reported favorably but not subsequently considered. The House bill was lost by a vote of 41-48.

#### 504. Governor Marshall's Recommendations (January 5, 1911).

In his biennial message to the General Assembly, delivered on January 5, Governor Marshall urged a number of changes in the Constitution. In order to correct irregular conditions in the exercise of the franchise which could not be completely changed until the Constitution was altered, he urged the enactment of a strong registration law, an amendment to the law prohibiting any person from entering the booth with a voter unless the voter was "incompetent from physical defect" to mark his ballot, and a corrupt practices act. The constitutional changes which he recommended included alterations in the electoral clause, particularly in regard to aliens; a bi-sected legislative session, the first meeting to be held in December for the introduction and amendment of bills, and a May meeting for the final consideration and passage of bills; the referendum on important measures affecting the public policy of the State; and uniform four year tenure of office.

[*House Journal, Sixty-seventh Session, 19.*]

There are certain provisions of our Constitution which do not meet present conditions. This document, sixty years old, has stood the test of war, the growth of a people and the bitterness of political feud, and has met in nearly every particular our wants and needs. Therefore, I should regret to see it radically altered. It contains, however, certain clauses which might be changed with value to good government. One of these is the electoral clause with reference to foreign-born citizens. So shifting is much of this foreign-born citizenship, so ignorant is it of our system of government, so little interested is it in our public affairs, and so wholly is it within the control of the political and business bosses, that this franchise should be curtailed.

We have never had much complaint against the character of the legislation enacted by our General Assemblies. It is true, however, that some legislation is crude by reason of the briefness of the sessions. It would conduce to good legislation if the Constitution were amended so as to provide for a legislative session in December, for the introduction and amendment of bills and for a second session, following an adjournment until first Monday in May, for the placing of bills upon their final passage.

Changes in the Constitution should also include a new clause providing that in the event of improper influences obtaining possession of the representatives of the people, and in the event of

legislation generally affecting the people, being enacted for the benefit of any special interest, then a specified number of the voters should have the right, without any legislative enactments whatever, to demand a referendum upon that legislation prior to its going into effect.

Many State and County offices have a two years' tenure while only a few have four. No good reason is now assigned why a four years' tenure of office should not be uniform and public interest would be subserved by not permitting an officer to serve longer than four years in any period of eight.

The Constitution, however, provides that while an amendment is awaiting the action of the electors, no additional amendment shall be proposed. The amendment touching the qualifications of lawyers has not been defeated, according to an old decision of the Supreme Court of Indiana. It is simply awaiting the action of the Electors. It was not ratified nor was it rejected by a constitutional number of votes, and, therefore, it must be submitted again either at a special or general election. To elaborate this condition of affairs further just now seems to me inadvisable in view of other important matters pending before you. Should disposition of these matters be made in time for proper consideration of these constitutional questions, it is not improbable that I shall again address you upon them.

#### 505. The Marshall Constitution (March 4, 1911).

The so-called "Marshall Constitution" was embodied in Senate bill No. 407, and was introduced by Mr. Evan B. Stotsenburg, a Democrat, on February 15, and submitted to the Committee on Constitutional Revision. On February 23, the committee submitted a divided report. The majority report, signed by the Democratic members, recommended passage; the minority report, signed by the Republican members, recommended indefinite postponement. The minority report was rejected by a vote of 18-27. On February 24, the bill was advanced to second reading by a vote of 28-16, several amendments were made and the bill was ordered engrossed. On February 27, the bill passed the Senate by a vote of 29-21. The bill was read a first time in the House on February 27, and referred to the Judiciary Committee. On February 28, the committee submitted a divided report. The majority report, signed by the Democratic members, recommended passage; the minority report, recommended indefinite postponement. On March 1, the minority report was laid on the table by a vote of 59-37, and the majority report was adopted. On second reading, the following amendment was proposed and laid on the table by a vote of 56-36.

## RECALL OF PUBLIC OFFICERS.

[*House Journal, Sixty-seventh Session, 1733.*]

I move to amend engrossed Senate bill No. 407 by adding Section 4½ at the end of Section 4 of Article 2 thereof, and before Section 5 thereof, commencing at the end of line 176 of the printed bill, as follows:

Section 4½. Every public officer in Indiana is subject as herein provided, to recall by the legal voters of the State of the electoral district from which he is elected. There may be required twenty-five per cent, but not more, of the number of electors who voted in his district at the preceding election for the highest State officer voted for, to file their petition demanding his recall by the people.

They shall set forth in said petition the reasons for said demand. If he shall offer his resignation, it shall be accepted and take effect on the day it is offered, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after the petition is filed, a special election shall be ordered to be held within twenty days in his said electoral district, to determine whether the people will recall said officer. On the sample ballot at said election shall be printed in not more than two hundred words, the reasons for demanding the recall of said officer as set forth in the recall petition, and in not more than two hundred words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said special election shall be officially declared. Other candidates for the office may be nominated to be voted for at said special election. The candidate who shall receive the highest vote shall be deemed elected for the remainder of the term, whether it be the person against whom the recall petition was filed or another. The recall petition shall be filed with the officer with whom a petition for a nomination for such office should be filed, and the same officer shall order the special election when it is required. No such petition shall be circulated against any officer until he has actually held his office six months, save and except that it may be filed against a Senator or Representative of the legislative assembly at any time after five days from the beginning of the first session after his election. After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless such further petitioners shall first pay into the public treasury, which has paid such special election ex-



penses, the whole amount of its expenses for the preceding special election. Such additional legislation as may aid the operation of this section, shall be provided by the legislative assembly, including provision for payment by the public treasury of the reasonable special campaign expenses of such officer. But the words, "the legislative assembly shall provide," or any similar or equivalent words in this Constitution or any amendment thereto, shall not be construed to grant to the legislative assembly any exclusive power of lawmaking nor in any way to limit the initiative and referendum powers reserved by the people.

By a vote of 59-37, the bill was then ordered to third reading. On March 2, the bill passed by a vote of 60-39. This rather extraordinary act contained an entire constitution, most of the provisions of the Constitution of 1851 were retained. The following are the important changes proposed: (1) Authorizing the General Assembly to enact a compulsory workman's compensation act; (2) empowering the State, in case of necessity, to take personal property without first assessing and tendering compensation; (3) prescribing as qualifications for voters a residence of twelve months in the State, the payment of a poll tax for a period of two years and, after November 1, 1913, the ability to read English or some other known language; (4) depriving citizens of a legal residence in the State who had been absent therefrom for a period of twelve months, unless a declaration of intention was filed with the clerk of the circuit court; (5) increasing the membership of the House to 130 members, and guaranteeing each county at least one representative and an additional representative for each quota in excess of the necessary population representing a quota; (6) limiting the apportionment of senators to once in ten years; (7) increasing the length of the regular sessions of the General Assembly to 100 days, and decreasing the length of special sessions to 30 days, and providing that only such business might be transacted at a special session as the Governor should specify in his proclamation; (8) authorizing the use of short titles for bills; (9) empowering the General Assembly to grant special charters to the cities of the State; (10) requiring a three-fifths majority to pass a bill over the Governor's veto; (11) authorizing the Governor to veto items and clauses in an appropriation bill; (12) making the attorney-general a constitutional officer, and fixing the term of all State officers at four years; (13) fixing the terms of county officers at four years; (14) providing that the Supreme Court should consist of not less than five nor more than eleven judges; (15) increasing the term of the prosecuting attorney from two to four years and rendering him ineligible to serve more than four years out of any eight years; (16) authorizing the General Assembly to adopt laws providing for the initiative, the referendum and the recall of all State and local officers except judges; (17) empowering the General Assembly to prescribe the qualifications of persons admitted to the practice of the law; (18) increasing the term of state superintendent of public instruction from two to four years; (19) requiring banks and banking companies to cease operation within fifty years instead of twenty years; (20) prohibiting the General Assembly to elect or appoint any officers except its own officers and United States senators; (21) prohibiting an increase in the salary or emoluments of any public offi-



cer for the term for which he was elected; (22) providing for the submission of proposed amendments to the people when they had passed both Houses of one General Assembly; if a majority of the votes cast on the amendment were in favor of its adoption, it was considered ratified; (23) authorizing any political party to declare for or against any proposed amendment, in convention, and have its declaration made a part of its ticket for submission to the electors; (24) prohibiting the submission of a new constitution to the people of the State for ratification until by virtue of an act of the General Assembly a majority of the legal voters of the State had declared themselves in favor of a constitutional convention; (25) requiring that any constitution framed by a convention must be submitted to the voters at a special election. The act further declared that any political party might declare in favor of the proposed new constitution and have the declaration placed upon the ballot, so that any voter who voted a straight ticket would thereby vote for the proposed constitution.

## THE PROPOSED CONSTITUTION.

[*Laws, 1911, 205.*]

### CHAPTER 118.\*

AN ACT to submit to the voters of the State of Indiana at the general election to be held on the first Tuesday after the first Monday in November, 1912, a new constitution permitting the same to be adopted or opposed by any political party, and if so adopted or opposed, providing the method in which the same shall become a part of the party ticket, providing for the canvass of the votes and the proclamation of the Governor announcing its adoption or rejection, and other matters connected therewith.

#### CONSTITUTION OF THE STATE OF INDIANA—SUBMISSION TO VOTERS.

Section 1. *Be it enacted by the general Assembly of the State of Indiana*, That at the general election to be held upon the first Tuesday after the first Monday in the month of November, 1912, there shall be submitted to all the legal voters of Indiana, for adoption or rejection, the following proposed new constitution:

#### PREAMBLE.

To the end that justice be established, public order maintained, and liberty perpetuated, we, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this constitution.

\*((Inconsistent capitalization has not been corrected.))

## ARTICLE I.

## BILL OF RIGHTS.

Section 1. We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasible right to alter and reform their government.

## RIGHT TO WORSHIP.

Sec. 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

## FREEDOM OF THOUGHT.

Sec. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions or interfere with the rights of conscience.

## NO PREFERENCE TO CREED.

Sec. 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.

## NO RELIGIOUS TEST.

Sec. 5. No religious test shall be required as a qualification for any office of trust or profit.

## NO MONEY FOR RELIGIOUS INSTITUTIONS.

Sec. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

## COMPETENCY OF WITNESS.

Sec. 7. No person shall be rendered incompetent as a witness in consequence of his opinion on matters of religion.

## OATH—HOW ADMINISTERED.

Sec. 8. The mode of administering an oath or affirmation shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

## FREE SPEECH AND WRITING.

Sec. 9. No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right every person shall be responsible.

## LIBEL, THE TRUTH IN.

Sec. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

## UNREASONABLE SEARCH OR SEIZURE.

Sec. 11. The right of the people to be secure, in their persons, houses, papers, and effects, against unreasonable search or seizure shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

## COURTS SHALL BE OPEN.

Sec. 12. All courts shall be open; and every man, for injury done him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law for injuries or death occurring in hazardous employment. In enacting such law, the general Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

## RIGHTS OF ACCUSED.

Sec. 13. In all criminal prosecutions the accused shall have the right to a public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusa-

tion against him, and to have a copy thereof; to meet the witnesses face to face; and to have compulsory process for obtaining witnesses in his favor.

#### NO PERSON TWICE IN JEOPARDY.

Sec. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

#### UNNECESSARY RIGOR PROHIBITED.

Sec. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

#### EXCESSIVE BAIL AND PUNISHMENT PROHIBITED.

Sec. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishment shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

#### OFFENSES BAILABLE.

Sec. 17. Offenses, other than murder and treason, shall be bailable by sufficient sureties. Murder and treason shall not be bailable when the proof is evident or the presumption strong.

#### REFORMATION THE BASIS OF PENAL CODE.

Sec. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

#### JURY TO DETERMINE LAW AND FACTS.

Sec. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

#### TRIAL BY JURY IN CIVIL CASES.

Sec. 20. In all civil cases, the right of trial by jury shall remain inviolate.

#### COMPENSATION FOR SERVICES.

Sec. 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by

law without just compensation; nor, in case of the State, without just compensation first assessed and tendered, save only in case of necessity.

#### EXEMPTION—NO IMPRISONMENT FOR DEBT.

Sec. 22. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt except in case of fraud.

#### PRIVILEGES EQUAL.

Sec. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

#### NO EX POST FACTO LAWS.

Sec. 24. No ex post facto law, or laws impairing the obligation of contract, shall be passed.

#### TAKING EFFECT OF LAWS.

Sec. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution.

#### SUSPENSION OF LAWS.

Sec. 26. The operation of the laws shall never be suspended, except by authority of the General Assembly.

#### SUSPENSION OF HABEAS CORPUS.

Sec. 27. The privilege of the writ of habeas corpus shall **not** be suspended, except in case of rebellion or invasion, and then only if the public safety demands it.

#### TREASON.

Sec. 28. Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.

#### PROOF IN TREASON.

Sec. 29. No person shall be convicted of treason, except on the



testimony of two witnesses to the same overt act, or upon his confession in open court.

#### EFFECT OF CONVICTION.

Sec. 30. No conviction shall work corruption of blood or forfeiture of estate.

#### RIGHT TO ASSEMBLE, INSTRUCT AND PETITION.

Sec. 31. No law shall restrain any of the inhabitants of the State from assembling together, in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

#### RIGHT TO BEAR ARMS.

Sec. 32. The people shall have the right to bear arms for the defense of themselves and the State.

#### MILITIA SUBJECT TO CIVIL POWER.

Sec. 33. The military shall be kept in strict subordination to the civil power.

#### RESTRICTIONS UPON SOLDIERS.

Sec. 34. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

#### NO TITLES OF NOBILITY.

Sec. 35. The General Assembly shall not grant any title of nobility nor confer hereditary distinctions.

#### EMIGRATION FREE.

Sec. 36. Emigration from the State shall not be prohibited.

#### SLAVERY PROHIBITED.

Sec. 37. There shall be neither slavery nor involuntary servitude within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any negro or mulatto, made and executed out of the bounds of the State, shall be valid within the State.

## ARTICLE II.

## SUFFRAGE AND ELECTIONS—ELECTIONS FREE.

Section 1. All elections shall be free and equal.

## QUALIFICATIONS OF ELECTORS.

Sec. 2. In all elections not otherwise provided for by this constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the twelve months, and in the township sixty days, and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside, if he shall have been duly registered according to law enacted by the General Assembly as in this section provided, and shall have paid his poll tax due and payable the year of such election and the year previous thereto without delinquency; but all poll tax shall be payable in full at the spring payment of taxes, and may be paid separately from other taxes at the option of the taxpayer. It shall be the duty of the General Assembly to provide by law at its first session after the adoption of this constitution, for the registration of all legal voters up to, and including, November 1, 1913; but thereafter, no person not theretofore registered, shall be admitted to registration who cannot read in English or some other known tongue any section of the constitution of the State.

## SOLDIERS—SEAMEN—MARINES.

Sec. 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine have the right to vote.

## RESIDENCE.

Sec. 4. No person shall be deemed to have lost his residence in this State by reason of his absence from the State, either on business of this State or of the United States; but any person absent from the State for twelve consecutive months for other reasons shall lose his residence unless, prior to the expiration of such year he files with the clerk of the circuit court of the county in which he resides, a declaration of his intent to hold his residence, and the exact location of the same.

## BRIBERY DISQUALIFIES FOR OFFICE.

Sec. 5. Every person shall be disqualified for holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat or reward to secure his election.

## CHALLENGE TO DUEL.

Sec. 6. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

## DISFRANCHISEMENT.

Sec. 7. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

## EFFECT OF HOLDING LUCRATIVE OFFICE.

Sec. 8. No person holding a lucrative office or appointment, under the United States, or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as by this constitution expressly permitted: *Provided*, That officers in the militia to which there is attached no annual salary, and the office of deputy postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *and, Provided, also*, That counties containing less than one thousand polls may confer the office of clerk, recorder and auditor, or any two of said offices, upon the same person.

## DEFAULTERS NOT ELIGIBLE.

Sec. 9. No person who may hereafter be a collector or holder of public moneys shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

## PRO TEMPORE APPOINTMENTS.

Sec. 10. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of

years continuously, an appointment pro tempore shall not be reckoned a part of that term.

#### ELECTORS FREE FROM ARREST.

Sec. 11. In all cases except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

#### METHOD OF ELECTIONS.

Sec. 12. All elections by the people shall be by ballot; and all elections by the General Assembly, or either branch thereof, shall be viva voce.

#### TIME OF ELECTIONS.

Sec. 13. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.

### ARTICLE III.

#### DISTRIBUTION OF POWERS.

Section 1. The powers of the government are divided into three separate departments; the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided.

### ARTICLE IV.

#### LEGISLATIVE—GENERAL ASSEMBLY.

Section 1. The legislative authority of the State shall be vested in the General Assembly, which shall consist of a senate and a house of representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana": and no law shall be enacted, except by bill.

## NUMBER OF MEMBERS.

Sec. 2. The senate shall not exceed fifty members; the house of representatives shall not exceed one hundred and thirty members, the same to be apportioned among the several counties of the State as in Section 4 of this article provided; and they shall be chosen by the electors of the respective counties and the districts into which the State may from time to time be divided.

## TERM OF OFFICE OF SENATORS.

Sec. 3. Senators shall be elected for the term of four years from the day next after the general election: *Provided, however,* That the senators holding office at the time this constitution goes into effect, shall serve until the expiration of the term for which they were elected.

## TERM OF OFFICE OF REPRESENTATIVES—APPORTIONMENT.

Sec. 4. Each county shall have at least one representative in the house of representatives, who shall be elected for a term of two years from the day after their election. A representative quota shall be obtained by dividing the total population of the State at the last national census by ninety-two, and each county having population in excess of a quota, shall have an additional representative for each full quota and fractional surplus of half a quota, in excess of the first quota. If any office of representative shall become vacant by death, resignation or otherwise, the governor shall call a special election to fill the vacancy.

## APPORTIONMENT OF SENATORS.

Sec. 5. The number of senators shall be apportioned among the several counties according to the population as shown by the last preceding United States census, but they shall only be apportioned every ten years: *Provided,* That the first election of senators in the General Assembly under this constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this constitution.

## SENATORIAL DISTRICT.

Sec. 6. A senatorial district where more than one county shall constitute a district, shall be composed of contiguous counties, and no county for senatorial apportionment, shall ever be divided.



## QUALIFICATIONS.

Sec. 7. No person shall be a senator or representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators shall be at least twenty-five and representatives at least twenty-one years of age.

## PRIVILEGE FROM ARREST.

Sec. 8. Senators and representatives in all cases except treason, felony, and breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either house, a member shall not be questioned in any other place.

## REGULAR AND SPECIAL SESSIONS.

Sec. 9. The sessions of the General Assembly shall be held biennially at the capital of the State beginning on the first Thursday after the first Monday in January, 1913, and on the same day every second year thereafter unless a different day or place shall have been appointed by law. The General Assembly shall remain in session for not exceeding one hundred days. If, in the opinion of the governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session for a specific purpose or purposes, but for a limited time, not to exceed thirty days, at which special session, only such specific purpose or purposes shall be taken up and acted upon.

## OFFICERS—ADJOURNMENT.

Sec. 10. Each house, when assembled, shall choose its own officers (the president of the senate excepted), judge the elections, qualifications, and returns of its own members, determine its rules of proceeding, and sit upon its own adjournment. But neither house shall, without the consent of the other, adjourn for more than three days nor to any place other than that in which it may be sitting.

## QUORUM.

Sec. 11. Two-thirds of each house shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either house fails to effect an organization within the first five days thereafter, the members of the house so failing shall be entitled to no compensation, from the end of the said five days, until an organization shall have been effected.

## JOURNAL.

Sec. 12. Each house shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal: *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

## DOORS TO BE OPEN.

Sec. 13. The doors of each house and of committees of the whole shall be kept open, except in such cases as, in the opinion of either house, may require secrecy.

## DISORDERLY BEHAVIOR PUNISHABLE.

Sec. 14. Either house may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

## IMPRISONMENT FOR CONTEMPT.

Sec. 15. Either house, during its session, may punish, by imprisonment, any person not a member who shall have been guilty of disrespect to the house, by disorderly or contemptuous behavior, in its presence; but such imprisonment shall not, at any time, exceed twenty-four hours.

## POWERS OF EACH HOUSE.

Sec. 16. Each house shall have all powers necessary for a branch of the legislative department of a free and independent State.

## BILLS—ORIGIN.

Sec. 17. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

## READING AND VOTE.

Sec. 18. Every bill shall be read, by sections, on three several days, in each house; unless, in case of emergency, two-thirds, of the house where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

## SUBJECT MATTER AND TITLE.

Sec. 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title unless such act shall provide a brief and comprehensive name for itself, by which it may thereafter be known and referred to; but if any subject shall be embraced in an act which shall not be expressed in or fairly covered by the title, such an act shall be void only as to so much thereof as shall not be expressed or covered.

## PLAIN WORDING.

Sec. 20. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

## ACTS—HOW AMENDED.

Sec. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length.

## LOCAL LAWS FORBIDDEN.

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;  
Granting divorces;

Changing the names of persons;

For laying out, opening, and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys, and public squares;

Summoning and impaneling grand and petit jurors and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township, or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;

In relation to interest on money;

Providing for opening and conducting the elections of State, county, or township officers, and designating the place of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees;

But the General Assembly may adopt special charters for the different cities of the State.

#### LAWS MUST BE GENERAL.

Sec. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

#### SUITS AGAINST THE STATE.

Sec. 24. Provision may be made by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

#### PASSAGE OF BILLS.

Sec. 25. A majority of all the members elected to each house

shall be necessary to pass every joint bill or resolution; and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective houses.

#### PROTEST AND ENTRY.

Sec. 26. Any member of either house shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

#### PUBLIC LAWS.

Sec. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

#### PUBLICATION—EMERGENCY.

Sec. 28. No act shall take effect until the same shall have been published and circulated in the several counties of this State by authority, except in case of an emergency; which emergency shall be declared in the preamble or in the body of the law.

#### PAY OF MEMBERS.

Sec. 29. The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase shall be made.

#### MEMBERS INELIGIBLE TO CERTAIN OFFICES.

Sec. 30. No senator or representative shall, during the term for which he may have been elected, be eligible to any office, the election of which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

### ARTICLE V.

#### EXECUTIVE—GOVERNOR.

Section 1. The executive powers of the State shall be vested in a governor. He shall hold his office during four years, and shall not be eligible more than four years in any period of eight years.



## LIEUTENANT-GOVERNOR.

Sec. 2. There shall be a lieutenant-governor, who shall hold his office during four years.

## ELECTION.

Sec. 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the General Assembly.

## MANNER OF VOTING.

Sec. 4. In voting for governor and lieutenant-governor, the electors shall designate for whom they vote as governor and for whom as lieutenant-governor. The returns of every election for governor and lieutenant-governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the General Assembly.

## PLURALITY ELECTS.

Sec. 5. The persons, respectively, having the highest number of votes for governor and lieutenant-governor shall be elected; but in case two or more persons shall have an equal, and the highest, number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons governor or lieutenant-governor, as the case may be.

## CONTESTS.

Sec. 6. Contested elections for governor or lieutenant-governor shall be determined by the General Assembly, in such manner as may be prescribed by law.

## QUALIFICATIONS.

Sec. 7. No person shall be eligible to the office of governor or lieutenant-governor who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices who shall not have attained the age of thirty years.

## PERSONS INELIGIBLE.

Sec. 8. No member of congress, or person holding any office

under the United States or under this State, shall fill the office of governor or lieutenant-governor.

#### TERM OF OFFICE.

Sec. 9. The official term of the governor and lieutenant-governor shall commence on the second Monday of January, in the year one thousand nine hundred and thirteen; and on the same day every fourth year thereafter.

#### VACANCIES.

Sec. 10. In case of the removal of the governor from office or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the lieutenant-governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the governor and lieutenant-governor, declaring what officer shall then act as governor; and such officer shall act accordingly, until the disability be removed, or a governor be elected.

#### PRESIDENT PRO TEMPORE OF SENATE.

Sec. 11. Whenever the lieutenant-governor shall act as governor, or shall be unable to attend as president of the senate, the senate shall elect one of its own members as president for the occasion.

#### GOVERNOR—COMMANDER-IN-CHIEF.

Sec. 12. The governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, or to suppress insurrection, or to repel invasion.

#### MESSAGES.

Sec. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

#### BILLS SIGNED—POWER OF VETO.

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the

objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, three-fifths of all the members elected to that house shall agree to pass the bill, it shall be sent, with the governor's objections, to the other house, by which it shall likewise be reconsidered; and, if approved by three-fifths of all the members elected to that house, it shall be a law. If any bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the governor. But no bill shall be presented to the governor without his consent within three days next previous to the final adjournment of the General Assembly. The governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

#### INFORMATION FROM OFFICERS.

Sec. 15. The governor shall transact all necessary business with the officers of government, and may require information, in writing, from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

#### EXECUTION OF LAWS.

Sec. 16. He shall take care that the laws be faithfully executed.

#### PARDONS AND REPRIEVES.

Sec. 17. He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to

the General Assembly, at its next meeting, each case of reprieve, commutation or pardon granted, and also the names of all persons in whose favor remissions of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however,* That the General Assembly may, by law, constitute a council, to be composed of officers of State, without whose advice and consent the governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

#### GOVERNOR MAY FILL VACANCIES.

Sec. 18. When during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any time, a vacancy shall have occurred in any other State office, or in the office of judge of any court; the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

#### WRITS OF ELECTION TO ASSEMBLY.

Sec. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

#### SEAT OF GOVERNMENT—WHEN MAY CHANGE.

Sec. 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

#### DUTIES OF LIEUTENANT-GOVERNOR.

Sec. 21. The lieutenant-governor shall, by virtue of his office, be president of the senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the senate shall be equally divided, he shall give the casting vote.

#### PAY OF GOVERNOR.

Sec. 22. The governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.

## PAY OF LIEUTENANT-GOVERNOR.

Sec. 23. The lieutenant-governor, while he shall act as president of the senate, shall receive for his services the same compensation as the speaker of the House of Representatives; and any person acting as governor shall receive the compensation attached to the office of governor.

## INELIGIBLE TO OTHER OFFICE.

Sec. 24. Neither the Governor nor lieutenant-governor shall be eligible to any other office during the term for which he shall have been elected.

## ARTICLE VI.

## ADMINISTRATIVE—STATE OFFICERS—TERMS.

Section 1. There shall be elected by the voters of the State, a secretary, an auditor, a treasurer of state, an attorney-general, reporter of the Supreme Court and clerk of the Supreme court. Said officers and all other State officers created by law and to be elected by the people, except Supreme Court judges, shall, severally, hold their offices for four years. They shall perform such duties as may be enjoined by law; and no person other than judges shall be eligible to any of said offices for more than four years in any period of eight years.

## TERMS OF COUNTY OFFICES.

Sec. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years; and no person shall be eligible to either of said offices for more than four years in any period of eight years.

## COUNTY AND TOWNSHIP OFFICERS.

Sec. 3. Such other county and township officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law.

## QUALIFICATIONS OF COUNTY OFFICERS.

Sec. 4. No person shall be elected or appointed as a county



officer who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized then within the limits of the county or counties out of which the same shall have been taken.

#### RESIDENCE OF STATE OFFICERS.

Sec. 5. The Governor, and the Secretary, auditor, and treasurer of State shall, severally, reside and keep the public records, books and papers in any manner relating to their respective offices at the seat of government.

#### RESIDENCE OF OTHER OFFICERS.

Sec. 6. All county, township and town officers shall reside within their respective counties, townships and towns; and shall keep their respective offices at such places therein and perform such duties as may be directed by law.

#### IMPEACHMENT OF STATE OFFICERS.

Sec. 7. All State officers shall, for crime, incapacity, or negligence be liable to be removed from office, either by impeachment by the house of representatives, to be tried by the senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

#### IMPEACHMENT OF COUNTY OFFICERS.

Sec. 8. All State, county, township and town officers may be impeached, or removed from office, in such manner as may be prescribed by law.

#### VACANCIES.

Sec. 9. Vacancies in county, township and town offices shall be filled in such manner as may be prescribed by law.

#### COUNTY BOARDS.

Sec. 10. The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character.

## ARTICLE VII.

## JUDICIAL—POWERS.

Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts, and in such other courts as the General Assembly may establish.

## NUMBER OF JUDGES—TERM.

Sec. 2. The Supreme Court shall consist of not less than five, nor more than eleven judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

## JUDICIAL DISTRICTS.

Sec. 3. The State shall be divided into as many districts as there are judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said judges shall be elected from each district, and reside therein; but said judges shall be elected by the electors of the State at large.

## JURISDICTION.

Sec. 4. The Supreme Court shall have jurisdiction co-extensive with the limits of the State in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

## DECISIONS IN WRITING.

Sec. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case and the decision of the court thereon.

## PUBLICATION OF DECISIONS.

Sec. 6. The General Assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court made under this constitution; but no judge shall be allowed to report such decisions.

## CLERK OF THE SUPREME COURT.

Sec. 7. There shall be elected, by the voters of the State, a clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

## CIRCUIT COURTS.

Sec. 8. The circuit courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law.

## JUDICIAL CIRCUITS—TERMS.

Sec. 9. The State shall, from time to time, be divided into judicial circuits; and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

## SPECIAL JUDGES.

Sec. 10. The General Assembly may provide by law, that the judge of one circuit may hold the courts of another circuit in cases of necessity or convenience; and in case of temporary inability of any judge, from sickness or any other cause, to hold the courts in his circuit, provision may be made by law for holding such courts.

## PROSECUTING ATTORNEYS—TERM.

Sec. 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years, and shall not be eligible to hold said office more than four years in any period of eight years.

## REMOVAL OF JUDGE OR PROSECUTOR.

Sec. 12. Any judge or prosecuting attorney who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

## PAY OF JUDGES.

Sec. 13. The judges of the Supreme Court and circuit courts

shall, at stated times, receive a compensation which shall not be diminished during their continuance in office.

#### JUSTICES OF THE PEACE.

Sec. 14. A competent number of justices of the peace shall be elected by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

#### CONSERVATORS OF THE PEACE.

Sec. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

#### INELIGIBILITY OF JUDGES.

Sec. 16. No person elected to any judicial office shall, during the term for which he shall have been elected, be eligible to any office of trust or profit under the State, other than a judicial office.

#### GRAND JURY SYSTEM.

Sec. 17. The General Assembly may modify or abolish the grand jury system.

#### CRIMINAL PROSECUTIONS.

Sec. 18. All criminal prosecutions shall be carried on in the name and by the authority of the State; and the style of all process shall be, "The State of Indiana."

#### COURTS OF CONCILIATION.

Sec. 19. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of justice, but such tribunals or other courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunal or court.

#### REVISION OF LAWS—INITIATIVE, REFERENDUM AND RECALL.

Sec. 20. The General Assembly shall, from time to time, take such steps as may be necessary for the codification of the

laws of the State, and on petition of twenty-five per centum of the qualified electors of the State at the last general election, the general Assembly may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no bill for the recall of the judiciary shall ever be passed.

#### ADMISSION TO BAR.

Sec. 21. The General Assembly may by law provide for the qualifications of persons admitted to the practice of the law.

### ARTICLE VIII.

#### EDUCATION—COMMON SCHOOLS.

Section 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

#### COMMON SCHOOL FUND.

Sec. 2. The common school fund shall consist of the congressional township fund, and the lands belonging thereto:

The surplus revenue fund;

The saline fund, and the lands belonging thereto;

The bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sale thereof; including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of



congress of the 28th of September, 1850, and deducting the expense of selecting and draining the same;

Taxes on property of corporations, that may be assessed by the General Assembly for common school purposes.

#### PRINCIPAL, A PERPETUAL FUND.

Sec. 3. The principal of the common school fund shall remain a perpetual fund which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools and to no other purpose whatever.

#### INVESTMENT AND DISTRIBUTION.

Sec. 4. The General Assembly shall invest in some safe and profitable manner all such portions of the common school fund as have not heretofore been intrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.

#### REINVESTMENT.

Sec. 5. If any county shall fail to demand its proportion of such interest for common school purposes, the same shall be reinvested for the benefit of such county.

#### COUNTIES—LIABILITY.

Sec. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

#### TRUST FUNDS INVIOLETE.

Sec. 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

#### SUPERINTENDENT OF PUBLIC INSTRUCTION.

Sec. 8. The General Assembly shall provide for the election, by the voters of the State, of a State superintendent of public instruction, who shall hold his office for four years, and whose duties and compensation shall be prescribed by law.

## ARTICLE IX.

## STATE INSTITUTIONS—BENEVOLENT.

Section 1. It shall be the duty of the General Assembly to provide by law, for the support of institutions for the education of the deaf and dumb, and of the blind, and, also, for the treatment of the insane.

## HOUSES OF REFUGE.

Sec. 2. The General Assembly shall provide houses of refuge for the correction and reformation of juvenile offenders.

## COUNTY ASYLUMS.

Sec. 3. The county boards shall have power to provide farms as an asylum for those persons who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

## ARTICLE X.

## FINANCE—ASSESSMENT AND TAXATION.

Section 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

## USES OF REVENUE—PAYMENT OF PUBLIC DEBT.

Sec. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

## APPROPRIATIONS.

Sec. 3. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

## RECEIPTS AND EXPENDITURES—STATEMENT.

Sec. 4. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly.

## CREATION OF DEBT.

Sec. 5. No law shall authorize any debt to be contracted on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense.

## COUNTIES—STOCK IN CORPORATIONS.

Sec. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

## WABASH AND ERIE CANAL.

Sec. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificates of stocks issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie canal to Evansville," passed January 19, 1846; and an act supplemental to said act, passed January 29, 1847;\* which, by the provisions of said acts or either of them shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal, in said acts mentioned; and no such certificates of stock shall ever be paid by this State.

## ARTICLE XI.

## CORPORATIONS—INCORPORATION OF BANKS.

Section 1. The General Assembly shall not have power to establish or incorporate any bank or banking company or moneyed institution, for the purpose of issuing bills of credit or bills pay-

\*((See note p. 86.))

able to order or bearer, except under the conditions prescribed in this constitution.

#### GENERAL BANKING LAW.

Sec. 2. No bank shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

#### REGISTRY OF NOTES.

Sec. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of the State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

#### BANK WITH BRANCHES.

Sec. 4. The General Assembly may also charter a bank with branches without collateral security as required in the preceding section.

#### BRANCHES MUTUALLY RESPONSIBLE.

Sec. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities upon all paper credit issued as money.

#### LIABILITY OF STOCKHOLDERS.

Sec. 6. The stockholders in every bank or banking company shall be individually responsible, to an amount over and above their stock equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

#### REDEMPTION.

Sec. 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning directly or indirectly, the suspension, by any bank or banking company, of specie payments.

## HOLDERS' PREFERENCE.

Sec. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

## INTEREST RATE.

Sec. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals loaning money.

## FIFTY YEARS LIMITATION.

Sec. 10. Every bank, or banking company, shall be required to cease all banking operations within fifty years from the time of its organization, and promptly thereafter to close its business.

## TRUST FUNDS.

Sec. 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches, but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

## STATE NOT TO BE STOCKHOLDER.

Sec. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter, nor shall the credit of the State ever be given, or loaned, in aid of any person, association, or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

## GENERAL CORPORATION LAWS.

Sec. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

## INDIVIDUAL LIABILITY.

Sec. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

## ARTICLE XII.

## MILITIA—ORGANIZATION.

Section 1. The militia shall consist of all able-bodied white male persons, between the ages of eighteen and forty-five years,



except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

#### GOVERNOR'S AIDS.

Sec. 2. The governor shall appoint the adjutant, quartermaster and commissary generals.

#### COMMISSIONS.

Sec. 3. All militia officers shall be commissioned by the governor, and shall hold their offices not longer than six years.

#### DIVISION OF MILITIA.

Sec. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions and companies, and fix the rank of all staff officers.

#### SEDENTARY AND ACTIVE.

Sec. 5. The militia may be divided into classes of sedentary and active militia in such manner as shall be prescribed by law.

#### EXEMPTION FROM SERVICE.

Sec. 6. No person conscientiously opposed to bearing arms shall be compelled to do militia duty; but such person shall pay an equivalent for exemption, the amount to be prescribed by law.

### ARTICLE XIII.

#### POLITICAL AND MUNICIPAL CORPORATIONS.

Section 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, to any amount, in the aggregate exceeding two per centum on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount, given by such corporation, shall be void; *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the

public authorities in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.

#### ARTICLE XIV.

##### BOUNDARIES.

Section 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south, by the Ohio river, from the mouth of the Great Miami river to the mouth of the Wabash river; on the west, by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash river; and thence by a due north line, until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by said east and west line, until the same shall intersect the first-mentioned meridian line which forms the western boundary of the State of Ohio.

##### JURISDICTION.

Sec. 2. The State of Indiana shall possess jurisdiction and sovereignty coextensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky, on the Ohio river, and with the State of Illinois, on the Wabash river, so far as said rivers form the common boundary between this State and said states, respectively.

#### ARTICLE XV.

##### MISCELLANEOUS—OFFICIAL APPOINTMENTS.

Section 1. All State officers whose appointments are not otherwise provided for in this constitution, shall be elected by the people or appointed by the governor as may be provided by law; and all municipal and local officers shall be elected or appointed as provided by law; but no officers shall be elected or appointed by the General Assembly except its own officers and United States senators; and no elective officer shall have his salary, compensation,

or emoluments increased during the period for which he was elected.

#### DURATION OF OFFICE.

Sec. 2. When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office the tenure of which shall be longer than four years.

#### HOLDING OVER.

Sec. 3. Whenever it is provided in this constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term and until his successor shall have been elected and qualified.

#### OFFICIAL OATH.

Sec. 4. Every person elected or appointed to any office under this constitution shall, before entering on the duties thereof, take an oath or affirmation to support the constitution of this State and of the United States, and also an oath of office.

#### STATE SEAL.

Sec. 5. There shall be a seal of State, kept by the Governor for official purposes, which shall be called the seal of the State of Indiana.

#### COMMISSIONS.

Sec. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed by the State seal and attested by the Secretary of State.

#### AREA OF COUNTY.

Sec. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county under that area be further reduced.

## LOTTERIES PROHIBITED.

Sec. 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed.

## PUBLIC GROUNDS.

Sec. 9. The following grounds owned by the State, in Indianapolis, namely, the State House square, the Governor's circle, and so much of out-lot numbered one hundred and forty-seven as lies north of the arm of the Central canal, shall not be sold or leased.

## TIPPECANOE BATTLE GROUND.

Sec. 10. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe battle ground.

## ARTICLE XVI.

## AMENDMENTS—HOW MADE.

Section 1. Any amendment or amendments to this constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals; and it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election and if a majority of said electors voting on such amendment or amendments shall ratify the same, such amendment or amendments shall become a part of the constitution; but if a majority of said electors shall not ratify the same, such amendment or amendments shall be defeated. Any political party may declare for or against any amendment, in convention, and have such declaration made a part of its ticket for submission to the electors, but no new constitution shall be submitted to the people of this State for ratification and adoption or rejection, until by virtue of an act of the General Assembly, a majority of the legal voters of the State have declared in favor of a constitutional convention; when and whereupon such constitutional convention shall be convened in such manner as the General Assembly may provide, but any constitution by such convention pro-

posed shall be submitted to the voters of this State for ratification or rejection at a special election as may be ordered by the General Assembly.

#### SEPARATE VOTE.

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while such amendment or amendments which shall have been agreed upon be awaiting the action of the electors, no additional amendment or amendments on the same subject shall be proposed.

#### SCHEDULE.

This constitution, if adopted, shall take effect on the first day of January, in the year one thousand nine hundred and thirteen, and shall supersede the constitution adopted in the year one thousand eight hundred and fifty-one. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force and not inconsistent with this constitution, shall remain in force until they shall expire or be repealed.

Second. All indictments, prosecutions, suits, pleas, complaints, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari and injunctions, shall be carried on in the several courts, in the same manner as is now provided by law.

Third. All fines, penalties and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer in his official capacity, shall remain in force, and inure to the use of those concerned.

Fourth. All acts of incorporations for municipal purposes shall continue in force under this constitution until such time as the General Assembly shall, in its discretion, modify or repeal the same.

Fifth. The governor, at the expiration of the present official term, shall continue to act until his successor shall have been sworn into office.

Sixth. There shall be a session of the General Assembly, com-



mencing on the first Thursday after the first Monday in January, in the year one thousand nine hundred and thirteen.

Seventh. Senators now in office and holding over, under the existing constitution, and such as may be elected at the next general election, and the representatives then elected, shall continue in office until the next general election under this constitution.

Eighth. The first general election under this constitution shall be held in the year one thousand nine hundred and fourteen.

Ninth. The first election for governor, lieutenant-governor, judges of the Supreme and circuit courts, under this constitution, shall be held at the general election in the year one thousand nine hundred and sixteen, and all other officers at the general election in the year one thousand nine hundred and fourteen; but all officers who may be in office when this constitution shall go into effect shall hold their offices to the expiration of the term for which they shall have been elected, or until their successors shall have been elected and qualified.

Tenth. Every person elected by popular vote, and now in any office which is continued by this constitution; and every person who shall be so elected to any such office before the taking effect of this constitution (except as in this constitution otherwise provided), shall continue in office until the term for which such person has been, or may be, elected, shall expire: *Provided*, That no such person shall continue in office, after the taking effect of this constitution, for a longer period than the term of such office in this constitution prescribed.

Eleventh. On the taking effect of this constitution, all officers thereby continued in office shall, before proceeding in the further discharge of their duties, take an oath, or affirmation, to support this constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this constitution, shall be filled in the manner now prescribed by law.

#### ELECTION—BALLOTS.

Sec. 2. Any political party may declare in favor of said proposed new constitution, in which event it shall be the duty of the State board of election commissioners to prepare the ballot as provided by law. The State board of election commissioners are invested with power and authority to so prepare the ballot as to enable a voter of a political party which neither adopts nor opposes

this proposed constitution, to vote his straight party ticket and at the same time, vote for or against the new constitution.

#### ELECTION OFFICERS—DUTIES.

Sec. 3. All election officers and other officials required by law to perform any duties with reference to general elections, shall perform like duties with reference to the submission of this question to the people.

#### RETURNS—CANVASS—RESULT.

Sec. 4. The returns shall be canvassed as in general elections by the governor and secretary of state, and should a majority of the votes cast be in favor of said proposed new constitution, then the governor shall issue his proclamation declaring the same to be in force and effect from and after the day mentioned therein. If a majority of the votes cast should be against its adoption, then the governor shall issue his proclamation declaring that the same has been rejected by the people of this State.

#### INFORMALITIES—LIBERALLY CONSTRUED.

Sec. 5. All informalities in this act with reference to the manner of presentation of this constitution, shall be liberally construed by the State board of election commissioners so as to enable the voters to intelligently vote thereon.

[S. 407, Approved March 4, 1911.]

#### 506. Protests Filed in Senate.

The passage of Senate bill No. 407 was vigorously opposed by the Republicans of both houses, and the protests filed by the minority members were set out in full in the journals.

[*Senate Journal, Sixty-seventh Session, 1477-85.*]

SENATOR KANE offered the following protest:

We, the undersigned members of the Senate of the Sixty-seventh General Assembly of the State of Indiana, protest against the passage of engrossed Senate bill No. 407 and its further consideration by this Senate on the grounds:

That the proposed plan of revising the Constitution of the State is in violation of the present Constitution of the State:

First. Because this General Assembly has no power to adopt

a new Constitution but has power only to provide for a convention to be selected by the people for that purpose, and;

Second. Because the proposed Constitution is no more than a series of amendments to the present Constitution and therefore can only be lawfully adopted by submitting the same to two sessions of the legislature and afterwards to the electors for adoption as provided by Section 1 of Article 16 of the present Constitution of the State.

KANE.	MOORE.
WOOD.	CRUMPACKER.
STRANGE.	WHITE.
HALLECK.	COMMONS.
KIMMEL.	HUNT.
LAMBERT.	GAVIT.
RATTS.	HIGGINS.
BRADY.	HANNA.
JENKENS.*	HIBBERD.

Which protest was ordered spread upon the Journal.

SENATOR MOORE filed the following protest:

Upon this question I desire to exercise my right, guaranteed under Article 4 Section 26, of the Constitution of Indiana, to protest, and to have my reasons for protest entered on the Journal.

I protest against the passage of this bill, because the action sought to be taken is irregular, illegal, and subversive of the rights of the people.

We have here a draft of an instrument with which it is proposed to displace our present Constitution. This draft is purported to have been made by the Governor of the State, who is clothed with no authority to make or propose changes in our organic law.

The act of altering, changing, or replacing the fundamental law of a commonwealth, should be one of great solemnity, and approached only after mature deliberation, and an equal opportunity to all to be heard. Yet the Governor writes this proposed new Constitution without notice to the people that he was performing, or intended to perform such a duty. Only members of his own political faction in the State were in any way apprised of the progress of even the contemplation of such an undertaking. And the people, as such, were further excluded, as if by deliberate motive, from having a voice in the making of the draft as aforesaid, when completed, to a political caucus of the dominant party in the legis-

\*((David C. Jenkins))

lature, held in the night-time, without public notice, and from which the public was excluded.

By reason of such methods, the motives of those who would thus destroy the organic law of the State, and foist upon the people another of their own secret making, is open to just suspicions of selfish interest and unworthy partisan bias. They are arrogating to themselves the right of making only such changes as they desire, and closing the door against the counsel and suggestions of all other citizens.

Such action is not only not sanctioned by any provision of our present Constitution, but in principle it is undemocratic, and in substance nothing short of usurpation. That the people will, at the last, be given an opportunity to vote upon the new instrument, is no answer to this. They have been rigidly excluded, either in their individual capacity, or through representatives which they should have the right to choose for the purpose, from expressing their will as to what shall or shall not go into the new Constitution. They can only vote for or against the proposition as a whole. It is not too much to charge that the method pursued is for the express purpose of this limiting of their rights, and disfranchising them in this, the highest, the supreme privilege of government.

It is a leading tenet in the creed of the Democratic party that the people shall rule. By this action of the organized democracy of Indiana, dominating the action of this legislature, the people are denied even the right to suggest or confer.

I protest that the method being pursued to bring about changes in our Constitution is without the sanction of law or precedent, and is revolutionary and dangerous. The Constitution, in Section 16, provides a method by which amendments may be made. The action here being taken is at variance with the procedure there laid down. Custom and established precedents, to say nothing of the principles of Republican government, point out plainly how a new Constitution may be adopted, and eminent authorities tell us the action being pursued by this legislature is out of harmony with all such precedents, customs and principles.

We have no right to amend the Constitution by passing upon proposals in only one legislature, and neither the legislature, the Governor, or any other official or citizen, has a right to write a new Constitution, and submit it as here proposed.

And, finally, I protest that the provisions of the draft before us are insufficiently considered, and that some of them are extremely unwise.

SENATOR STRANGE submitted the following protest:

I vote no on the passage of Senate bill No. 407, and hereby desire to enter my protest against the passage of the bill.

1. Because, I do not believe it is within the power of the General Assembly of the State to amend, revise or adopt a new Constitution by legislative enactment to be submitted to the people to be voted upon.

2. Because the proceeding is unwarranted in law, and in violation of the provisions and spirit of the Constitution of the State of Indiana.

SENATOR KIMMEL made the following protest:

In accordance with the rights granted by the Constitution of Indiana to each individual member of the General Assembly, I wish, herewith, to present my protest against the consideration of Senate bill No. 407 being considered and voted upon by this Senate, and I wish to have such protest entered upon the Journal of this Senate.

I object to the consideration of this bill for this reason: The making or altering of a Constitution is an act of sovereign power; not legislative. There are necessary two distinct parts to the making and adoption of a constitution or amendments thereto. The first is the drafting of the instrument or amendments thereto. The second is the ratification or rejection thereof. The drafting of a new constitution has always been done in every State of the American Commonwealth by a convention of delegates selected for the purpose. In case of amendments the same must be done in accordance with the provisions of the constitution itself. It makes no difference whether we call this action a new Constitution or an amendment to the old Constitution. If it be a new Constitution, it should be drafted in accordance with the custom and precedents established in this country.

If it be considered amendments to the present Constitution, they should be made in accordance with the provisions of the present Constitution. It is not sufficient to say, that the people have the opportunity of ratifying or rejecting this instrument. The people also have the right to draft it; and, I cannot consent to the



right of the people in this case being taken away from them without entering my protest. It is nowhere granted that the legislature of the State has a right to draft the Constitution; it is contrary to all precedents and usage; it is irregular, revolutionary in its character and detrimental to our institutions.

SENATOR DURRE made the following protest:

I respectfully protest against the proposed manner of amending the Constitution of the State of Indiana, as the same is a mere makeshift and subterfuge.

I have no scruples against having the Democratic party using a road roller on their opponents ordinarily, but do seriously protest against their wrecking the ship of State, temporarily entrusted to their care, upon the rocks of incompetency.

If the cargo consisted only of the proposers of this revolutionary program it might not make so much difference, but the people are part of the freight and we the unfortunate minority are involuntarily a part of the crew, compelled to assist in the management of this unpleasant voyage. Hence my fear and apprehension.

SENATOR LAMBERT made the following protest:

I protest against the passage of Senate bill No. 407 because it is revolutionary and an usurpation of authority by this legislature that belongs to the people, and upon which the people of Indiana have not yet delegated their authority to act to any legislative or other body. To make the fundamental law of the land is the inherent right of the people, and that right they retain until it is expressly delegated to others. I know of no instances in the history of this or any other country in which Constitutions have been made without that authority having been specifically delegated to a body chosen by the people for that purpose, and I deny the right of this legislature to assume that authority at this time.

The matter of a new Constitution or a revision of the old one was not an issue in the campaign of 1910, and consequently, members of this legislature were not elected for that purpose. To the layman who is not a student of constitutional law, it seems a mockery to make an entire Constitution by the legislature, when the Constitution itself prescribes that any single amendment, important or unimportant, must pass two successive legislatures and then be approved by a majority of the people of the State before it can be written into law.

For these reasons, Mr. President, I ask that this protest be

made a part of the record as my right under Article 4 Section 26 of the Constitution of the State of Indiana. I therefore vote no.

SENATOR WOOD made the following protest:

I protest against the passage of Senate bill No. 407 for the following reasons:

1. Because it is in violation of the plain provisions of our present Constitution with reference to the law of amending said Constitution.

2. It is an unwarranted usurpation of the rights of the people, who alone have the power to adopt a new Constitution or to revise the old one.

3. The above bill was created by one man without authority of the people, submitted to a caucus of one political party which adopted the same, binding those who were against its adoption, as well as those who were in favor of it, to vote for its passage. A Constitution thus framed is not the expression of the people and by it they cannot and will not be bound.

4. If a new Constitution is to be had it should be framed by a constitutional convention, the members of which should be selected by the people for the very purpose of framing a Constitution; and the members of that body should be free from political prejudice, partisan bias, and chosen solely for their ability to consider the question of making a Constitution.

5. There is not a member of this legislature who was selected for the purpose of framing a Constitution. There is not a member of this legislature who has been delegated by his people to participate in the framing of a Constitution. There is not a member of this legislature who has any right under the present Constitution and his oath of office to vote for the above measure.

SENATOR HANNA made the following protest:

I protest against the passage of Senate bill No. 407 for the following reasons:

The legislative powers are limited, the same as other divisions of State government are limited, and we have no right under the Constitution to pass such a bill.

The making of a new Constitution belongs to the people, and no one man or body of men can usurp or take away that power or right.

The people should have a right to express their wish first as to whether they desire a new Constitution, and then in the event they so desire, the making of a new Constitution should be taken up by

a constitutional convention, where the people would have an opportunity of selecting their own delegates for that specific purpose, and then their will would be carried out by such a convention.

The idea of this legislature taking up this question at this late date and deciding all questions that such a bill would necessarily have to decide, when the revision of the Constitution that we now have took over four months to compile, is an absurdity.

Then the provisions in this Constitution being such that it is practically impossible to ever amend or revise it, is another very bad feature. This right should never be taken from the people. The people are jealous of their rights and even if it is possible to thrust this down their throats they never will stand for it.

#### 507. Protests Filed in House.

[*House Journal, Sixty-seventh Session, 1753.*]

Protests were filed as provided by Article 4 Section 26 of the Constitution of the State, as follows:

##### PROTEST OF MR. BEDGOOD.

Limitation of debate is often essential, but gag rule is never justifiable in a legislative assembly of intelligent gentlemen. Any party or any set of political partisans who attempt to throttle the legitimate functions of a duly accredited representative is guilty of conduct unworthy of the respect of any man who loves his country or his country's institutions. Debate, discussion and opportunity to even offer my constituents' views with reference to engrossed Senate bill No. 407 were denied me by the Democratic members of the House of Representatives of the Sixty-seventh General Assembly, and for this reason, if for no other, I offer to this House my personal protest to this method of conducting its business and to the denial of my rights and the rights of my constituents, in its manner of handling the bill for the amended constitution for the great State of Indiana, and respectfully request that this instrument be made a part of the records of this day's proceedings and entered upon the Journal.

##### PROTEST OF MR. BERRY.

As a member of this General Assembly, I wish to protest against the passage of Senate bill No. 407 as an unwarranted usurpation of the rights of a free people. I protest against the method of promulgating this so-called constitution. It is in defiance of lib-

erty and justice. It springs from the brain of an over-zealous political boss and not from the hearts of the people.

Under Article 4 Section 26 of our present Constitution, I demand that this protest be entered upon the Journal.

#### PROTEST OF MR. BREINING.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that our ancestors came to this land to escape the oppression of the mother country, where the liberties of the people were regarded lightly. They adopted their national and State Constitution with great deliberation and care and with the intention that it should protect themselves and their posterity forever in their homes, lives and property.

To change and alter our Constitution by the provision of an over-night caucus is revolting to my sense of right, justice and equity, and I demand that my protest be entered upon the Journal of the House.

#### PROTEST OF MR. BROWN.

I desire to enter my protest against the passage of Senate bill No. 407, for the reason that the action of this Assembly in attempting to enact it into law, is revolutionary and a violation of the official oath of every member who stands sworn to support the Constitution we now have; for the further reason the bill is the product of one mind, conceived in partisan bias and prejudice, agreed upon as a party measure in a party caucus behind closed doors, and designed to be submitted to the people and voted upon as a party measure on a party ticket; for the further reason that all the voters of the State have the right, not only to vote for or against any constitution proposed, but also to have a hearing and be considered in the framing and wording of the instrument upon which they will vote, whereas this bill was conceived in darkness and secrecy, was promulgated in a party caucus in the night time, and is being railroaded through the Assembly without opportunity for the members to consider its provisions or offer amendments thereto, and for the further reason that the Constitution, the only safeguard of our republican form of government against party prejudice and partisanship, is, by this bill, to be destroyed and replaced by another made by one party, in a manner never before employed in the making of a Constitution for any State or nation,

and contrary to the very principles upon which constitutional government is based.

Believing as I do that the basic law of a State should never be attacked in political bias or for political advantage, as is being done here, I desire that this protest be entered upon the Journal.

#### PROTEST OF MR. CAMPBELL.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that it attempts to amend and annul the present Constitution of this State, in an unusual and untried manner. The Constitution of this and every other State, is the only unchangeable protection the citizens of this nation have in their life, liberty, property and pursuit of happiness, and to change it in this manner would set an unwarranted precedent, and I demand that my protest be entered upon the Journal of the House.

#### PROTEST OF MR. CARTER.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that the Constitution of the State of Indiana is the most solemn and sacred instrument adopted by our forefathers. I believe the present proposed plan of altering any of its provisions is unconstitutional, and will be declared invalid by the Supreme Court of this State. I ask that this protest be entered on the Journal of the House.

#### PROTEST OF MR. CONNELLY.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that it is my belief that the organic law of this State should only be changed, altered or amended, by a constitutional convention properly called for that purpose. That, I believe, was the intention of our forefathers originally, and I would consider myself false to the best interests of the people of this State, to allow this measure to pass without entering my protest against its passage. I demand that this protest be entered in the Journal of the House.

#### PROTEST OF MR. COHEE.

I desire to enter my protest against the passage of Senate bill No. 407, for the reason that the action of this Assembly in attempting to enact it into a law is revolutionary and a violation of the official oath of every member who stands sworn to support the Con-



stitution we now have; for the further reason the bill is the product of one mind, conceived in partisan bias and prejudice, agreed upon as a party measure in a party caucus behind closed doors, and designed to be submitted to the people and voted upon as a party measure on a party ticket; for the further reason that all the voters of the State have the right, not only to vote for or against any constitution proposed, but also to have a hearing and be considered in the framing and wording of the instrument upon which they will vote, whereas this bill was conceived in darkness and secrecy, was promulgated in a party caucus in the night time and is being railroaded through the Assembly without opportunity for the members to consider its provisions or offer amendments thereto, and for the further reason that the Constitution, the only safeguard of our republican form of government against party prejudice and partisanship, is by this bill to be destroyed and replaced by another made by one party, in a manner never before employed in the making of a constitution for any State or nation, and contrary to the very principles upon which constitutional government is based.

Believing as I do, that the basic law of a State should never be attacked in political bias or for political advantage, as is being done here, I desire that this protest be entered upon the Journal.

#### PROTEST OF MR. COLVERT.

At this hour I wish to register the protest of the good citizenship which I represent against the further consideration of Senate bill No. 407, or its enactment into law. In civilized nations and commonwealths the days of despots have ended.

Constitutions are basic and sacred creations, and the people alone should be their creators. The creator should not owe his life to the created, neither should a constitution owe its creation to the child which it created. The people are the only sovereignty above the Constitution and they should be the first to say what shall go into it.

I demand that this protest be entered on the Journal.

#### PROTEST OF MR. CLARK.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that the people of Indiana know that there was no thought of this General Assembly attempting to submit a new amended or a revised constitution.

We were not selected for any such purpose. It is abhorrent to

think of devoting a few minutes only to the consideration of the organic law of our commonwealth. I make this protest and have cast my vote against this revolutionary measure, and I demand that my protest be entered upon the Journal of the House.

#### PROTEST OF MR. ESCHBACH.

Believing as I do in the sacred character of the Constitution of my State, and believing as I do that it is the inherent right of the people, and theirs alone, after periods of deliberation and discussion, to formulate and adopt amendments to their Constitution, I enter my solemn protest against the enactment into law of Senate bill No. 407.

Not only is it in violation of the rights of the citizens of Indiana, whom I represent, and a violation of the principles of the Constitution to which I swore allegiance, but it is a usurpation of power bordering on anarchy, and if long indulged will lead to internal strife and dissension and eventually to revolution. I demand that the protest be entered on the Journal.

#### PROTEST OF MR. EWARD.

Believing that under Article 1 Section 9 of our Constitution, which says "no law shall be passed restraining the free interchange of thought and opinion or restricting the right to speak, write or print freely on any subject whatever" and having been denied that right by this legislative body upon so great a question as making a new constitution for the State of Indiana, I protest against voting on this question for the reason that I was denied the right to be heard upon this important question, and I vote no, but I ask that my protest be entered upon the Journal of the House.

#### PROTEST OF MR. FINLEY.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for two reasons.

First. Because there has been no opportunity for the people of the State or the members of the House of Representatives to study the same. It has been on the members' desks only a few hours without an opportunity being given the members of the House to learn what it contains.

Second. Because it is being forced to passage with no opportunity being given those to be governed under it the right to say what it shall contain.

The people of the State got no opportunity to elect delegates

to draw this Constitution, and I certainly think thousands of patriotic and intelligent people in this State must wish they could vote for a delegate who would try to put into this instrument what they desire. Then the minority of the House have no opportunity to amend this bill or to incorporate any of their ideas therein.

The House amends on second reading. This bill was forced past second reading with the minority denied the right to even offer amendments. It is being forced through in an unjust, unwise, un-American, undemocratic and revolutionary manner.

I demand that my protest be entered upon the Journal of the House.

#### PROTEST OF MR. FARIS.

I desire to enter my protest against the passage of Senate bill No. 407, for the reason that the action of this Assembly in attempting to enact it into law is revolutionary and a violation of the official oath of every member who stands sworn to support the Constitution we now have; for the further reason the bill is the product of one mind, conceived in partisan bias and prejudice, agreed upon as a party measure in a party caucus behind closed doors, and designed to be submitted to the people and voted upon as a party measure on a party ticket; for the further reason that all the voters of the State have the right, not only to vote for or against any Constitution proposed, but also to have a hearing and be considered in the framing and wording of the instrument upon which they will vote, whereas this bill was conceived in darkness and secrecy, was promulgated in a party caucus in the night time, and is being railroaded through the Assembly without opportunity for the members to consider its provisions or offer amendments thereto, and for the further reason that the Constitution, the only safeguard of our republican form of government against party prejudice and partisanship, is by this bill to be destroyed and replaced by another made by one party, in a manner never before employed in the making of a constitution for any State or nation, and contrary to the very principles upon which constitutional government is based.

Believing, as I do, that the basic law of a State should never be attacked in political bias or for political advantage, as is being done here, I desire that this protest be entered upon the Journal.

#### PROTEST OF MR. GRIEGER.

As a member of the House of Representatives of the State of

Indiana, and as a citizen of the State of Indiana, I hereby protest against the proposed act, for the following reasons, viz.:

First. For the reason that the said pretended act is an attempt to amend the Constitution of the State of Indiana, and is contrary to the method provided by said Constitution for the amendment of the same; and

Second. Because the legislature has no authority to pass a law which attempts to take the place of the present Constitution now in force.

Third. That the proposed act is illegal, and contrary to the provisions of the Constitution of Indiana, and for the reasons stated, I hereby enter my protest against the passage of this act, and request that this protest be recorded on the Journal of this House.

#### PROTEST OF MR. GRIMMER.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that the people alone can make their organic law, their solemn Constitution. We have had two Constitutions in Indiana, the first framed after weeks of earnest labor by nonpartisans in 1816. The second, our present Constitution, was prepared after months of painstaking labor by men without reference to party and having only in mind the welfare of the State and her people. Both were adopted and approved by the people. These Constitutions did not grow in the dark. These Constitutions never had the stamp of partisanship upon them. The Constitution of 1851, under which we have so long lived and prospered, provides the method of amendment. That method is exclusive and must be followed if we obey the supreme law of the State. That method is not the method of Tom Marshall or the method of the Democrats in caucus, and for these reasons I protest. I vote "no" and I ask that my protest be entered upon the Journal of the House.

#### PROTEST OF MR. GUILD.

I desire to enter my protest against the passage of Senate bill No. 407, introduced by Senator Stotsenburg, for the reason that the action of this Assembly in attempting to enact it into law is revolutionary and a violation of the official oath of every member who stands sworn to support the Constitution we now have, and for the further reason that the bill is the product of one mind, conceived in partisan bias and prejudice, agreed upon as a party



measure in a party caucus behind closed doors, and designed to be submitted to the people and voted upon as a party measure on a party ticket; for the further reason that all the voters of the State have the right, not only to vote for or against any Constitution proposed, but also to have a hearing and be considered in the framing and wording of the instrument upon which they will vote, whereas this bill was conceived in darkness and secrecy, was promulgated in a party caucus in the night time, and is being railroaded through the Assembly without opportunity for the members to consider its provisions or offer amendments thereto. And for the further reason that the Constitution, the only safeguard of our republican form of government against party prejudice, and partisanship, is by this bill to be destroyed and replaced by another made by one party, in a manner never before employed in the the making of a Constitution for any State or nation, and contrary to the very principles upon which constitutional government is based.

Believing, as I do, that the basic law of a State should never be attacked in political bias or for political advantages, as is being done here, I desire that this protest be entered upon the Journal.

#### PROTEST OF MR. HUFFORD.

As a citizen of the State and as a member of this General Assembly, having taken oath to support the Constitution of the State of Indiana, I hereby protest against the passage of engrossed Senate bill No. 407, for the reason that it is in direct violation of Section 1 Article 16 of the State Constitution, and I make this protest under and by the right given me in Section 26 of Article 4, of the State Constitution as a member of this General Assembly, and demand that this protest be entered on the Journal.

#### PROTEST OF MR. A. JOHNSON.

I desire to enter my protest against the further consideration of engrossed Senate bill No. 407, for the reason that after taking a solemn oath to support the Constitution of the State of Indiana, I most earnestly protest against the violating of that sacred obligation by unlawfully attempting to place before the people an illegal act for their consideration. For this reason, being forced to vote, I cast my vote against this unjust and unwise usurpation of authority and demand that this protest be entered upon the Journal of the House.



## PROTEST OF MR. MADDOX.

For the first time during this session I take the privilege of explaining my vote. I come from a county which has been in the habit of sending Democratic representatives to this lawmaking body, and I feel that I owe to my Democratic constituents a duty and obligation to support all good legislation, no difference from where it originated. Again, when I took the oath of office I agreed that I would support the Constitution of the State of Indiana, and today, for me to vote to tear in shreds that Constitution and substitute for it one drawn in the night, and which had not been read by one member of this body from the time it was laid on the table till it was sent to engrossment, even though it might be the most perfect Constitution ever framed for any State, would be a breach of trust and honor. Gentlemen of the majority, I am not prompted to vote against this bill by republicans alone, but by men who in times past have molded you people as balls of putty, and today can see no good reason for such gag legislation. Your platform did not declare for a new Constitution, and no one ever heard of such a thing till the last days of this session, and then it was conceived as the last straw that might save a drowning man.

I hereby demand that this protest be recorded on the Journal, that future ages may know my reason for voting "no."

## PROTEST OF MR. MENDENHALL.

In the name of the great State of Indiana, which I love to honor, and in the names of justice and equity to the citizens thereof, and in support of the principles of the Constitution, the foundation of every truly representative government, I protest against the consideration and passage of Senate bill No. 407.

Never before in the history of constitutional government has this proceeding been paralleled; never before has the dictation of a single man, with a selfish and partisan purpose, unless supported by an overwhelming army and navy, forced an unwilling and protesting citizenship to even so much as publicly express themselves on so momentous an issue.

The people will speak, and to them we will hearken, and I demand that this protest be placed on the Journal.

## PROTEST OF MR. McCLEW.

In view of the oath of fidelity which I took to the Constitution of the State of Indiana, I feel that if I were to let it be cast, and without a protest, I should be guilty of violating my trust. The

Constitution was made to guard the rights of the people, and no man or set of men is given the power to rise above it. The Constitution has defined the powers of the various departments of the State government. It has limited those powers. If the General Assembly acts in disregard of the limitations of the Constitution itself it may disregard any other limitations. It may disregard the executive or judicial departments in their respective spheres. This is an amended Constitution and the changes proposed are amendments. This manner of changing the Constitution cannot but be in direct violation of Article 16, which says that all amendments shall be referred to the General Assembly before being submitted to the electors of the State. If this proposed manner of changing the Constitution were not in violation of the existing constitutional provision, it would nevertheless be wholly averse to the spirit of a republican government to make changes in the Constitution in the manner proposed. It forces the people absolutely to reject or accept the proposal of one man. For these reasons I make this protest and ask that it be entered upon the Journal of the House.

#### PROTEST OF MR. OGLEBAY.

That justice may be established and order maintained and our liberty perpetuated, in casting my vote in opposition to the proposed amendments to the Constitution, I do so in the light of popular government, and in recognition of the fact that the source of all power is with the people, and that the virtue of the power of the Constitution is within itself and not delegated to one man who may be elected Governor (by the people), who may say how or when it shall be amended. I, therefore, personally protest against the action of this body in these premises, and desire that the same may be entered in the records of the Journal of this, the Sixty-seventh session of the General Assembly of the State of Indiana.

#### PROTEST OF MR. MCPHERSON.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that the people of Indiana solemnly adopted our Constitution more than half a century ago. It was prepared by statesmen and not politicians. It was prepared after careful consideration and after mature deliberation. It provides the only means for its own amendment. Any other method is illegal and revolutionary, and I enter my solemn protest against the passage of this unconstitutional act and demand that my protest be entered upon the Journal of the House.

## PROTEST OF MR. MYERS.

Because I believe present proceedings on engrossed Senate bill No. 407 are revolutionary and antagonistic to the spirit of the Constitution, which every man in this House is sworn to support, and believing it is in direct violation of the rules of this Assembly, I protest, and demand my constitutional right to have this protest entered upon the minutes of this House. I vote "no."

## PROTEST OF MR. OLDAKER.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that this attempt by one man to force his ideas of a Constitution upon the people of the State of Indiana without their consent, without right, and in violation of the Constitution which he has solemnly sworn to support, is an insult to the intelligence of the people who elected him and is without warrant in law; therefore, I protest against the passage of this bill and ask that it be recorded as such in the Journal of the House.

## PROTEST OF MR. PLUMMER.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that in the name of Washington, Jefferson, Lincoln and every soldier and sailor who gave his life for his country in its holy wars for freedom, I protest against a violation of the people's rights, guaranteed them under their Constitution, and I demand that this, my protest to the passage of this bill, be recorded in the Journal of the House.

## PROTEST OF MR. RATLIFF.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that the methods adopted in framing this bill providing for a new Constitution are clearly irregular and unconstitutional, and if not it certainly is un-American and contrary to American principles of government.

The Constitution is the organic law of the Commonwealth and should not be changed except by a constitutional convention, and only then after the most careful and mature deliberation by men trained and experienced in the fundamental principles of American government. I ask that my protest be entered upon the Journal of the House.

## PROTEST OF MR. REYNOLDS.

As the Constitution is the foundation of all law, and as it is the safeguard of the people, it is of the greatest importance that it be zealously guarded.

Inasmuch as the one under which we are now living provides for the change and amendment, and as the present bill proposes to change the same in a manner which I believe is absolutely unjust and unconstitutional, I, therefore, protest against the manner of said changes, as it would be a violation of my oath of office, and ask that this protest be spread on the Journal.

## PROTEST OF MR. ROSS.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, for the reason that, assuming as true that the General Assembly has the right to frame a new Constitution and submit it to the people for ratification, this bill does not present a new Constitution to the people, but simply an amendment to the present Constitution of our fathers. Such an act is unconstitutional and I protest against its violation and demand that this protest be recorded in the Journal of the House.

## PROTEST OF MR. RUPEL.

For the first time during this session I take the privilege of explaining my vote. I come from a county which has been in the habit of sending Democratic Representatives to this law-making body, and I feel that I owe to my Democratic constituents a duty and obligation to support all good legislation, no difference from where it originated. Again, when I took the oath of office I agreed that I would support the Constitution of the State of Indiana; and today for me to vote to tear in shreds that Constitution and substitute for it one drawn in the night, and which had not been read by one member of this body from the time it was laid on the table till it was sent to engrossment, even though it might be the most perfect Constitution ever framed for any State, would be a breach of trust and honor.

Gentlemen of the majority, I am not prompted to vote against this bill by Republicans alone, but by men who in times past have molded you people as balls of putty and today can see no good reason for such gag legislation.

Your platform did not declare for a new Constitution, and no one ever heard of such a thing till the last days of this session, and

then it was conceived as the last straw that might save a drowning man.

Mr. Speaker, I hereby demand that this protest be recorded on the Journal, that future ages may know my reason for voting no.

#### PROTEST OF MR. TROYER.

The Constitution of Indiana, under which the State has been governed for sixty years, and which I have sworn to support, provides the method by which it may be amended. If it needs amendment, the people should be permitted to say what shall be the new provisions, and time should be given for consideration. Senate bill No. 407 itself provides that such action as is herein provided shall be unlawful hereafter.

The majority of this House has refused to permit members to discuss the provisions of this bill, or to offer amendments thereto. I therefore protest against the further consideration of this bill and ask that my protest be entered on the Journal of the House.

#### PROTEST OF VAN HORNE.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407 for many reasons, among which are that the consideration of this bill is a violation of our oath of office to support the present Constitution; a violation of the duty we owe the people of the State of Indiana, as we have been elected to enact laws, and not to draft a Constitution; a violation of the time-honored custom handed down to us from time immemorial of the people making their own constitution by constitutional convention and a vote of the people, a violation of the method of amending the present Constitution as provided in the present Constitution; and I do further protest against the consideration of said House bill No. 407\* for the reason that said bill was prepared and loaded in the Democratic caucus and is the product of only a part of the present legislature, and that the minority did not even have an opportunity to submit suitable, proper and necessary amendments thereto, and said bill is not the result of a proper representation of all of the people of Indiana, and that part of it represented by Republican Senators and Representatives, have had no voice in drafting said proposed constitution, and said action is invalid and illegal, and request this protest be entered upon the Journal of this House.

#### PROTEST OF MR. WASMUTH.

As a citizen of the State of Indiana and a member of the House

\*((sic))



I protest against the passage of engrossed Senate bill No. 407, for the reason that it is revolutionary and contrary to all law and precedent. For the further reason that by its provisions it attempts to accomplish the adoption of sweeping amendments to the Constitution and to make the issue as a whole a party measure, giving to the individual no opportunity to choose between its separate provisions; and for the further reason that by its adoption, it would operate to defer indefinitely the submission of other amendments to the Constitution desired by a large number of citizens of the State to a vote of the people.

For these reasons I enter this protest, and demand that it be entered in the Journal of the House.

#### PROTEST OF MR. WATSON.

In view of the fact that a constitution should be the product of a constitutional convention selected for that purpose, and not for a Governor, set of men or legislative body to thrust upon the people of a State, for that reason, as a citizen of the State of Indiana and a member of this House of Representatives, I vote no, and enter this, my protest, against this procedure, and request that it be spread of record and entered in the Journal.

#### PROTEST OF MR. WHITE.

I protest against the further consideration of engrossed Senate bill No. 407, for the reason that I believe that if the bill be enacted into law it will be unconstitutional.

I demand that this protest be recorded in the Journal of the House.

#### PROTEST OF MR. WIDER.

I desire to enter my protest against the consideration of engrossed Senate bill No. 407, and request that this, my protest, be entered in full upon the Journal of the House.

First. I believe the method adopted to amend or alter the Constitution is wrong in principle and in law.

Second. I do not believe the people of this State elected us for any such purpose.

Third. If passed, no opportunity will be given the citizen to vote for such provisions as he believes are right, and against those he believes to be wrong, as he must either vote for or against all amendments as a whole.

Fourth. Because the Constitution should be amended only

after a constitutional convention has carefully considered every provision or change contemplated.

#### PROTEST OF MR. WILLIAMS.

In behalf of the people of Indiana, whose rights and privileges under the law are arbitrarily taken from them by Senate bill No. 407, I protest against its adoption.

In behalf of constitutional government and a just regard for the rights of every citizen, I protest against the adoption of Senate bill No. 407.

I protest against the power of one man to dictate to the three millions of Indiana's citizens on that question. I ask that this protest be made a matter of record.

#### 508. Submission of Constitutional Amendments (March 6, 1911).

The only other constitutional measure adopted by the General Assembly of 1911, was an act providing a method of submitting proposed constitutional amendments to the people. The act authorized political parties to declare in favor of or against any proposed constitutional amendment, and to have the proposed amendment printed on the ballot. In the event that a voter voted a straight ticket, the proposed constitutional amendment printed on the ticket was thereby given an affirmative vote. This bill was introduced in the Senate by Mr. Evan B. Stotsenburg on January 16, and passed on January 25, by a vote of 42-1. The bill passed the House on March 4 by a vote of 55-36. (See Documents No. 494 and 503.)

[*Laws, 1911, p. 534.*]

AN ACT prescribing a method for the preparation of ballots for proposed constitutional amendments, and providing for the certification of the approval or disapproval of such proposed amendments by a State convention of any political party, to the secretary of state, and the printing and arranging of the action of such state convention on such proposed amendments as a part of the official ballot of such political party, and providing a method for marking and counting ballots for said proposed amendments, and the placing and arrangement of such proposed amendments on voting machines, and other matters incident thereto.

#### CONSTITUTIONAL AMENDMENTS—POLITICAL PARTY ACTION.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever any constitutional amendment is to be submitted to a vote of the people, the State convention of any political party assembled for the purpose of nominating candidates for State officers of such political party, having at the last preceding

general election polled at least one per cent of the entire vote cast in the State, may take action in favor of or against the adoption of such constitutional amendment to be submitted at the next succeeding general election, and shall certify such action to the secretary of state in the manner provided for certifying nominations for State officers, whereupon said action upon such constitutional amendment shall be printed upon the regular ballot at said election as a part of the party ticket of such political party in the manner hereinafter provided. If more than one proposed amendment to the Constitution is submitted at the same time, such political convention shall have the right to declare in favor of or against any or all of them.

#### BALLOTS—FORM.

Sec. 2. Such constitutional amendment or amendments shall be stated on such ballots in words sufficient to clearly designate the same, and such statement or statements shall be printed in a separate column on the official ballot. On the line below such statement shall be printed the word "Yes," and on the next line below shall be printed the word "No." Said statement shall also be placed on the official ballot immediately below the names of the candidates for State offices on the regular ticket of any party or parties certifying action thereon, as provided in Section 1 of this act, followed by the word "Yes" or the word "No," according as affirmative or negative action shall have been certified thereon by said party or parties, and said statement of said amendment or amendments with the action taken thereon by said party, shall thereupon become a part of said party ticket.

#### MARKING OF BALLOT.

Sec. 3. The elector shall observe the following rules in marking his ballot:

(a) He may make a cross-mark (X) in the blank space to the left of and before the answer he desires to give to the submission of any constitutional amendment in the separate column devoted to said amendments, in which event if said voter should vote a straight party ticket upon which such constitutional amendment or amendments are placed, such vote upon the question of such constitutional amendment or amendments shall be counted as indicated in the separate column containing such constitutional amendment or amendments; or if he votes a mixed ticket he may

make a cross-mark (X) in the blank space to the left of and before the statement and answer thereto of any constitutional amendment as the same may be printed and certified on the ticket of any political party; whereupon such mark shall cast his ballot for the answer opposite which it is made.

(b) The voter if he desires to vote a straight party ticket [may] make a cross-mark (X) in the blank circular space at the head of any ticket upon which is printed the statement of any constitutional amendment or question, and the certified answer thereto, which mark shall cast his ballot for the certified answer to the submission of each and every constitutional amendment so printed on said party ticket, unless he shall have specifically marked any of said constitutional amendment otherwise elsewhere on the ballot in the manner heretofore stated.

Any mark on a ballot made as prescribed in this section shall not be deemed a distinguishing mark.

#### ELECTION LAWS APPLIED.

Sec. 4. Except as provided herein[of] the provisions of Section 62 of an act entitled "An act concerning elections, providing penalties for violation of same," approved March 6, 1889, the same being Section 6258 of Burns' Revised Statutes of 1901, shall apply to the election herein provided for and all the provisions of State law or laws relating to the marking and counting of ballots for candidates not inconsistent herewith shall apply to the marking and counting of votes upon any constitutional amendment in any election held under the provisions of this act.

#### VOTING MACHINES.

Sec. 5. In all precincts wherein voting machines are employed, the statement or statements mentioned in Section 2 of this act, shall be so placed upon such voting machine, and if such political convention or conventions shall take the action prescribed in Section 1 of this act, all such voting machines shall be so arranged as that the voter may cast his ballot for or against any proposed amendment or amendments as a part of the straight party ticket as may be certified by such political convention, and such statement or statements and voting machines shall also be so arranged as that the voter may vote for or against any amendment separately and not as a part of a straight party ticket.



## REPEAL.

Sec. 6. All laws and parts of laws in conflict herewith are hereby repealed.

[S.B. 138. Approved March 6, 1911.]

**509. Suffrage Qualifications and Ratification of Amendments  
(January 10, 1911).**

On January 10, Senator Evan B. Stotsenburg introduced a resolution proposing two amendments to the Constitution. By the first amendment proposed, all reference to foreign-born voters was eliminated and the General Assembly was authorized to enact a registration law applicable to the whole State or to any portion thereof. By the second amendment, it was provided that if an amendment submitted to the people for the ratification should receive a majority of the votes cast on the proposition, it should be considered adopted. On January 16, the resolution was advanced to engrossment and not subsequently considered.

[*Senate Journal, Sixty-seventh Session, 57.*]

Joint resolution No. 2 concerning the amendment of Section 1 Article 2, and Section 1, Article 16, of the Constitution of the State of Indiana:

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to Article 2 Section 1 of the Constitution of said State be, and the same is now agreed to and referred to the General Assembly of said State to be chosen at the next general election:

Article 2, section 1. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he may reside. The General Assembly shall have the right to enact a registration law for the State generally, or for any portion or portions of the State. If any citizen shall be by law required to register, then before he shall be entitled to vote he shall be duly registered.

Sec. 2. *Be it further resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to Article 16 Section 1, of the Constitution of said State, be and the same is, now agreed to and referred to the General Assembly of said State to be chosen at the next general election.

Article 16 Section 1: Any amendment or amendments to this



Constitution may be proposed in either branch of the General Assembly, and if the same be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their Journals and referred to the General Assembly to be chosen at the next general election, and if in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State, and if a majority of the electors voting on such amendments shall ratify the same, such amendment or amendments shall become a part of this Constitution.

#### **510. Residential Qualifications of Electors (January 10, 1911).**

On January 10, Mr. Edwin Corr, a Democrat, introduced a somewhat similar suffrage qualification amendment in the House. The Corr amendment was designed to eliminate all reference to foreign voters, and to require a residence of six months in the county, sixty days in the township, and thirty days in the ward or precinct before the right to vote was acquired. On February 18, the resolution was indefinitely postponed.

*[House Journal, Sixty-seventh Session, 62.]*

Joint resolution No. 3. A joint resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of the State be, and the same is now agreed to and referred to the General Assembly of said State, to be chosen at the next general election: Amend Section 2 of Article 2 of said Constitution to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the county during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the precinct where he may reside if he shall have been duly registered according to law.

#### **511. Constitutional and Legislative Initiative and Referendum (January 11, 1911).**

An amendment, proposing to incorporate the initiative and referendum in the Constitution, was proposed on January 11, by Mr. James B. Merri-

man, a Democrat. On February 1, the resolution was reported favorably and ordered printed, but no subsequent action was taken.

[*House Journal, Sixty-seventh Session, 72.*]

A joint resolution to amend Section 1 of Article 4 of the State Constitution.

Section 1. *Be it resolved by the General Assembly of the State of Indiana, That* Section 1 of Article 4 of the State Constitution be amended to read as follows: Section 1. The legislative power of the State shall be vested in the General Assembly, consisting of a Senate and House of Representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the Constitution, and to enact or reject the same at the polls independent of the General Assembly, and also reserve power at their own option to approve or reject at the polls any act, item, section or part of any act of the General Assembly.

The first power hereby reserved by the people is the initiative, and at least eight per cent of the legal voters shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petition for State legislation and amendments to the Constitution shall be addressed to and filed with the Secretary at least four months before the election at which they are to be voted upon.

The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate presentation of the public peace, health or safety, and appropriations for the support and maintenance of the departments of State and State institutions, against any act, section or part of any act of the General Assembly, either by petition signed by five per cent of the legal voters or by the General Assembly. Referendum petitions shall be addressed to and filed with the Secretary of State not more than ninety days after the final adjournment of the session of the General Assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section or part of any act, shall not delay the remainder of the act from becoming operative. The veto power of the Governor shall not extend to measures initiated by, or referred to the people. All elections on measures referred to the people of the State shall be held at the biennial regular general election, and all such measures shall become the law or a part of the Constitution, when approved by a majority of the votes cast there-

on, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the Governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the General Assembly of the right to enact any measure. The whole number of votes cast for Secretary of State at the regular general election last preceding the filing of any petition for the initiative or referendum, shall be the basis on which the number of legal voters necessary to sign such petition shall be counted, in the manner provided by the laws in the State of Indiana for the canvass of votes for Representative in Congress.

Sec. 2. That this resolution is hereby referred to the General Assembly elected at the next general election.

### 512. Compulsory Workman's Compensation (February 10, 1911).

On February 10, Mr. Edmund M. Wasmuth, a Republican, introduced a resolution in the House proposing to amend the Constitution by authorizing the General Assembly to enact a compulsory workman's compensation act. The resolution was referred to the Committee on Federal Relations. On February 14, the resolution was indefinitely postponed. On February 18, Mr. Wasmuth introduced the same resolution and it was referred to the Judiciary Committee, and reported favorably on February 23, but not subsequently considered.

*[House Journal, Sixty-seventh Session, 970.]*

Joint resolution No. 10 to amend Article 4 of the Constitution of the State of Indiana.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That Article 4 of the Constitution of the State of Indiana, be amended by adding thereto Section 31 to read as follows:

Sec. 31. The General Assembly shall have the power to enact laws to regulate industrial compensation, and to compel the arbitration and payment without litigation of all claims for personal injuries sustained by workmen, wage earners, laborers and other employees.

Sec. 2. The same is hereby agreed to and referred to the General Assembly elected at the next general election.

### 513. State-Wide Prohibition (February 15, 1911).

On February 15, Senator William M. White, a Republican, introduced a resolution proposing to amend the Constitution so as to prohibit the manufacture and sale of intoxicating liquors. The resolution was referred to the Committee on Constitutional Revision and not subsequently considered.

[*Senate Journal, Sixty-seventh Session, 1099.*]

A joint resolution to amend the State Constitution in relation to intoxicating liquors.

**514. Prohibiting Manufacture and Sale of Intoxicating Liquors (February 15, 1911).**

On the same day, February 15, a similar resolution was introduced in the House by Mr. Jacob G. Maddox, a Republican, and referred to the Judiciary Committee. On February 18, the resolution was referred to the Committee on Public Morals and not subsequently considered.

[*House Journal, Sixty-seventh Session, 1144.*]

Joint resolution No. 12 to amend the Constitution of the State of Indiana, prohibiting the manufacture, sale or keeping for sale spirituous, vinous, malt and any intoxicating liquors.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendment to the Constitution of said State be, and the same is hereby now agreed to, the same to be submitted to the vote of the electors of said State.

Sec. 2. The manufacture, sale, or keeping for sale of spirituous, vinous, malt liquors, or any intoxicating liquors, except for medical, scientific, and sacramental purposes, shall be and is hereby forever prohibited in the State of Indiana.

**515. Woman Suffrage (February 4, 1911).**

An equal suffrage amendment was proposed in the Senate on February 4, by Mr. Charles T. Akin, a Democrat, by request. The amendment was embodied in Senate bill No. 311, and was referred to the Committee on Constitutional Revision and not subsequently considered.

[*Senate Journal, Sixty-seventh Session, 782.*]

A bill for an act to amend Article 2 of the Constitution of the State of Indiana, relating to the qualification of voters within the State.

**516. Constitutional Convention (February 14, 1911).**

One bill providing for the call of a constitutional convention was under consideration during the session of 1911. This measure was introduced in the Senate by Mr. Will R. Wood, a Republican, on February 14, and was referred to the Committee on Revision of the Constitution, and not subsequently considered.

[*Senate Journal, Sixty-seventh Session, 1053.*]

A bill for an act concerning a constitutional convention.



**517. Democratic State Platform of 1912 (March 21, 1912).**

The Democratic Convention which assembled in Indianapolis on March 21, 1912, adopted the following resolution adverting to the suit which was pending in the courts relative to the validity of the so-called "Marshall Constitution."

*[Indianapolis News, March 21, 1912.]*

The attainment of honest elections lies at the foundation of all other reforms, and of all progress. The effort of the legislature to provide an opportunity for the people to vote on much needed reforms by the submission of a proposed new Constitution, has been arrested by a suit which is now pending in the Supreme Court of the State.

The Democratic party awaits the determination of the questions involved in that suit with full confidence that the judicial branch of the government will discharge every duty imposed upon it.

**518. Republican State Platform of 1912 (August 6, 1912).**

The Republican Convention which assembled in Indianapolis, on August 6, 1912, endorsed woman suffrage, condemned the efforts of the Democrats to secure a revision of the Constitution by irregular methods, and went on record in favor of a Constitutional convention.

*[Indianapolis News, August 6, 1912.]*

We approve an amendment to the State Constitution providing for the enfranchisement of women.

We condemn the effort of the present State administration, pronounced illegal by the courts, to revise the State Constitution by a method which denied to the people the right to exercise the powers guaranteed to them by the Constitution, to control completely the work of rewriting the State Constitution when undertaken. We favor a revision of the Constitution by a constitutional convention, consisting of representatives elected by the people and the submission to the people for ratification or rejection of the changes in the State's organic law proposed by this Constitution.

**519. Progressive State Platform of 1912 (August 1, 1912).**

The Progressive Convention which convened in Indianapolis on August 1, 1912, endorsed "equal suffrage for women on all questions" and favored the calling of a Constitutional Convention.



[*Indianapolis News, August 1, 1912.*]

We favor the calling of a constitutional convention by the next legislature, the delegates thereto to be chosen by direct vote of the people on a non-partisan ballot.

## 520. Socialist State Platform of 1912.

At its Convention held in Indianapolis in 1912, the Socialist Party adopted the following resolution endorsing woman suffrage.

[*Legislative Manual, 1913, 24.*]

Equal suffrage, without regard to sex, race or property qualifications.

## 521. *Ellingham v. Dye*—Marshall Constitution Case (July 5, 1912).

The act of 1911, submitting a "proposed new Constitution" to the electors for ratification or rejection, was vigorously assailed by those persons who objected to the irregularity of the method of submitting the proposition to the voters. Accordingly, a test case was instituted and presented to the circuit court of Marion county, Judge Charles Remster presiding. The act was alleged to be unconstitutional for the following reasons: (1) The General Assembly is without power to prepare and submit to the people, in accordance with the provisions of the act, a proposed fundamental law, whether an entire new constitution or an amendment thereto; (2) the method of submission provided was in violation of the existing Constitution; (3) certain provisions of the proposed organic law were violative of the provisions of the act of Virginia conveying to the United States the territory northwest of the Ohio river, the Ordinance of 1787, and the enabling act of 1816; (4) those provisions of the proposed new constitution concerning the principles of proportionate representation and a republican form of government were in violation of Section 4 Article 4 of the Constitution of the United States. These contentions were sustained by the lower court and the act was held to be null and void. From that judgment an appeal was taken to the State Supreme Court and on July 5, 1912, the conclusions of Judge Remster were sustained and the act was held to be in derogation of constitutional authority. The opinion of the court was written by Chief Justice Cox, and a dissenting opinion was filed by Judge Morris in which Judge Spencer concurred.\*

The underlying question involved was whether chapter 118 of the acts of 1911 was a valid exercise of legislative power. The friends of the measure contended that the act involved the submission to the electors of a "new constitution" for adoption or rejection; and that the General Assembly has the power, involved in the general grant of legislative power, to initiate, draft and submit a new constitution to the people in such form and manner as to enable them to adopt it as the organic law of the State. The opponents of the measure contended that the power to initiate, frame and submit to the people fundamental law is not legislative power in the sense in which the General Assembly is vested with legislative power; that the act in question

\*((The opinions printed here are neither accurate nor complete transcriptions of the originals; see Introduction--1975.))

was not a new constitution but "merely proposed amendments of the existing Constitution"; hence these amendments could be submitted to the people only in the manner prescribed by Article 16 of the Constitution, namely, after having been adopted by two succeeding General Assemblies.

The court in its conclusions held that: (1) The legislative power granted by the Constitution is "the power to make, alter, and repeal laws," and not to draft new constitutions; (2) if the act of 1911 be considered the draft of a new constitution, the General Assembly was without power to enact or submit it; (3) if the act be merely a series of amendments, it is in violation of Article 16 of the Constitution and for that reason void; (4) the determination of the question as to whether legislative action is void for want of power, or because the constitutional provisions have been violated is a judicial question; (5) since the duties imposed on the governor by the provisions of the act were ministerial only and did not pertain to the gubernatorial office, the courts were not deprived of jurisdiction under the rule that the acts of the governor cannot be controlled by the courts; (6) a State officer executing an unconstitutional law is not to be regarded as acting by the authority of the State and hence citizens may maintain an action to restrain him from proceeding thereunder; (7) an injunction will not be denied to restrain the State board of election commissioners from proceeding to submit a proposed State constitution to the vote of the electors because the governor,\* being a member of the board, with control over the military forces of the State,\*\* the court would have no ability to enforce its decree in case it was disregarded; (8) a taxpayer, suing for himself, and all others interested, had capacity to enjoin the officers prescribed by the act from submitting the question to vote.

#### OPINION OF THE COURT—ACT HELD UNCONSTITUTIONAL.

((178 Ind. 336, 340, 99 N.E. 1, 2))

The underlying question involved, out of which all the others presented grow, is simply, whether the act printed as Chapter 118 is a valid exercise of legislative power by the General Assembly. On this question appellants contend that the act involves the submission of a new Constitution to the people for adoption or rejection, and that the General Assembly is clothed with power to initiate, draft and submit a new Constitution to the people in such form and manner as to enable them to adopt it as the organic law of the State. This power, it is asserted, is included in the general grant of the legislative power of the government instituted by the existing Constitution, which is made to the General Assembly by Section 1 of Article 4 of that instrument, which provides that "the legislative authority of the State shall be vested in the General Assembly."

Appellee, on the contrary, in support of the conclusion of the trial court that the act in question is unconstitutional and void, contends that the power to initiate, frame and submit to the

\*((Read: Governor . . . is a member))

\*\*((Read: State, and))

people fundamental law is not legislative power in the sense in which the General Assembly is vested with legislative power by that provision. But the making of fundamental law, being essentially different from ordinary legislation, the power of the General Assembly in relation to it is measured by the special and limited grant of power to it, made by Article 16 of the present Constitution to initiate, frame and submit amendments in the mode and manner therein provided; and that this, by necessary implication, withholds the right of the broader and more comprehensive exercise of the power so to participate in fundamental legislation involved in initiating, preparing and submitting a new Constitution. Appellee also contends that the draft embodied in Chapter 118 is not that of a new Constitution, but that it is in substance, truth and fact merely proposed amendments of the existing Constitution, and that, therefore, it cannot be lawfully submitted to the people for their action, because of noncompliance with the requirements of Article 16. \* \* \*

Under such a Constitution the General Assembly of our State is clothed with legislative authority in the words of Section 1 of Article 4, quoted above. That the General Assembly is supreme and sovereign in the exercise of the lawmaking power thus conferred upon it, subject only to such limitations as are imposed, expressly or by clear implication, by the State Constitution and the restraints of the Federal Constitution, and the laws and treaties passed and made pursuant to it, has been uniformly declared by an unbroken line of decisions of this court from the beginning of the judicial history of the State to the present time. But this general grant of authority to exercise the legislative element of sovereign power has never been considered to include authority over fundamental legislation. It has always been declared to vest in the legislative department authority to make, alter and repeal laws, as rules of civil conduct pursuant to the Constitution made and ordained by the people themselves, and to carry out the details of the government so instituted.

"The legislative power we understand to be the authority, *under the Constitution*, to make laws, and to alter and repeal them. 'Laws,' in the sense in which the word is here employed, are rules of civil conduct, or statutes, which the legislative will has prescribed." Cooley's Constitutional Limitations (7th Ed.) p. 131.

The legislative power which the general grant in our Constitution bestows upon the General Assembly, this court has held to be the power to make, alter and repeal laws. *State ex rel. v.*

Denny, (1889), 118 Ind. 382, 387, 21 N. E. 252, 4 L. R. A. 79; City of Evansville v. State ex rel (1889), 118 Ind. 426, 21 N. E. 267, 4 L. R. A. 93; State ex rel. Holt v. Denny (1889), 118 Ind. 449, 21 N. E. 274, 4 L. R. A. 65; State ex rel. v. Hyde (1889), 121 Ind. 20, 26, 22 N. E. 644.

In Lafayette, etc., R. Co. v. Geiger (1870), 34 Ind. 185, at page 198, it was said by Buskirk, J.: "When the Constitution of a State vests in the General Assembly all legislative power, it is to be construed as a general grant of power, and as authorizing such legislature to pass any law within the *ordinary functions of legislation*, if not delegated to the federal government or prohibited by the State Constitution."

The grant to the General Assembly of "the legislative authority of the State" did not transfer from the people to the General Assembly all the legislative power inhering in the former, but, as said in McCullough v. Brown (1893), 41 S. C. 220, 248, 19 S. E. 458, 23 L. R. A. 410, only "such legislative power as may be necessary or appropriate to the declared purpose of the people in framing their constitution and conferring their powers upon the various departments constituted for the sole purpose of carrying into effect their declared purpose." The words "legislative power," in a constitutional delegation of general legislative authority, "mean the power or authority under the constitution or frame of government to make, alter and repeal laws." O'Neil v. Am. Fire Ins. Co. (1895), 166 Pa. St. 72, 30 Atl. 943, 26 L. R. A. 715, 45 Am. St. 650.

To erect the State or to institute the form of its government is a function inherent in the sovereign people. To carry out its purpose of protecting and enforcing the rights and liberties of which the ordained constitution is a guaranty, by enacting rules of civil conduct relating to the details and particulars of the government instituted, is the function of the legislature under the general grant of authority. It needed no reservation in the organic law to preserve to the people their inherent power to change their government against such a general grant of legislative authority. And yet we find in the first section of the first article of the Constitution this statement of the purpose of the government which they had builded, and the declaration of their power over it: "We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought



to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasible right to alter and reform their government."

With knowledge of the tendency of vested power to broaden and exalt itself, the people have declared their abiding power over the framework of the government, while in section 1 of Article 4 they gave into the hands of an agency the authority to exercise all their power to make laws to carry out the declared purpose of the government, save such as they had withheld by express or implied limitations, or had surrendered to the Federal government.

A State constitution has been aptly termed a legislative act by the people themselves in their sovereign capacity, and, therefore, the paramount law. Cooley's *Constitutional Limitations* (7th Ed.) p. 242; *Sill v. Corning*, (1857), 15 N. Y. 297, 303. It has again been defined to be "an act of extraordinary legislation by which the people establish the structure and mechanism of their government." *Eakin v. Raub* (1825), 12 Serg. & R. (Pa.) 330, 347. In *Sage v. Mayor*, (1897), 154 N. Y. 61, 47 N. E. 1096, 38 L. R. A. 606, 61 Am. St. 592, a constitution is designated as a supreme enactment, a fundamental act of legislation by the people of the State. A constitution is legislation direct from the people, acting in their sovereign capacity, while a statute is legislation from their representatives, subject to limitations prescribed by the superior authority. *People v. May* (1855), 3 Mich. 598. Jameson, in his work on *Constitutional Conventions*, a work which has evoked the unqualified approval of Judge Cooley in his *Constitutional Limitations*, in discussing the difference between fundamental and ordinary legislation, says on pages 84 to 86: "Ordinary laws are enactments and rules for the government of civil conduct, promulgated by the legislative authority of a State, or deduced from long-established usage. It is an important characteristic of such laws that they are tentatory, occasional and in the nature of temporary expedients. Fundamental laws, on the other hand, in politics, are expressions of the sovereign will in relation to the structure of the government, the extent and distribution of its powers, the modes and principles of its operation, and the apparatus of checks and balances proper to insure its integrity and continued existence. Fundamental laws are primary, being the commands of the sovereign establishing the governmental machine, and the most general rules for its operation. Ordinary laws are secondary, being commands of the sovereign, having ref-



erence to the exigencies of time and place resulting from the ordinary working of the machine. Fundamental laws precede ordinary laws in point of time, and embrace the settled policy of the State. Ordinary laws are the creatures of the sovereign acting through a body of functionaries existing only by virtue of the fundamental laws, and express, as we have said, the expedient, or the right, viewed as the expedient, under the varying circumstances of time and place. \* \* \* Fundamental laws are either structural, or expressive of the *settled policy* of the State; and second, that they may, consequently, be, as they theoretically are, laid down in advance, for ages to come; whilst, on the contrary, ordinary laws are merely temporary expedients or adjustments, and cannot be allowed to stiffen into constitutional provisions without extreme danger to the commonwealth; that, in other words, they have no place in a Constitution, and, therefore, as will be more fully shown in a subsequent chapter, are not proper subjects for the action of bodies charged with framing Constitutions." Jameson, *Const. Conventions* (4th ed.) 84-86. And again, in discussing the powers of a legislature he says, on page 359: "It is the body which pronounces the statute law of the State. All measures relating to the conduct or to the rights of individuals, to the administration, or defense of the government, which are not prohibited by the fundamental law or by the moral code, and which yet are deemed, on a large view of the public interests, to be expedient, are within the competence of a legislature with the general powers of legislation conferred by our Constitutions. To this general statement of the extent of the power of our legislatures, the *proviso* must be appended, that the measures passed by those bodies must not be of the character denominated fundamental. The necessity of this *proviso* is apparent from the character of the American governments, before referred to, as distinguished from that of Great Britain, after which they were modeled. The Parliament of Great Britain is possessed of all legislative powers whatsoever. It can enact ordinary statutes, and it can pass laws strictly fundamental. Not so with our legislatures. Saving the single case, to be noted in a subsequent chapter, in which, by express constitutional provision, they act in conventional capacity, in the way of recommending specific amendment to their Constitutions, they have no power whatever to amend, alter or abolish those instruments. Subject, however, to this limitation, a legislature, under our system, may expatiate through the whole domain of the expedient, as fully as the sovereign itself could do, were it to act in person. The

propriety of such an adjustment of powers is apparent from the consideration, that whatever is expedient to be done, within the limits imposed by the fundamental law, and whatever, therefore, it may presume the sovereign, in the case supposed, would order to be done, some agency, in all governments pretending to be adequate to perpetuate their own existence, must have authority to do. The formation and establishment of the fundamental law is, in all the American Constitutions, regularly the work of Conventions acting in conjunction with the electors. On the other hand, no fact is better settled than that, beyond the province thus specially set apart for them, neither Conventions nor the bodies of electors have any legislative power. They can neither of them pass any law comprised within the sphere of ordinary legislation." Jameson, *Const. Conventions* (4th ed.) 359.

In *State v. Cox* (1848), 3 Eng. (Ark.) 436, 443, in a discussion of the powers of a legislature, it was said: "Among the general powers of the legislative department, is that of passing any law not inconsistent with the Constitution of the United States or of the State. \* \* \* The General Assembly, in amending the constitution, does not act in the exercise of its ordinary legislative authority or its general powers; but it possesses and acts in the character and capacity of a convention, and is, *quoad hoc*, a convention expressing the supreme will of the sovereign people." This language of the Supreme Court of Arkansas meets the approval of the author Jameson in his work on Constitutional Conventions on page 586, where it is said that "it expresses with admirable brevity, force, and clearness, the true doctrine in regard to the power of our General Assemblies under similar clauses of our Constitutions."

In *Eason v. State* (1851), 6 Eng. (Ark.) 481, the case of *Cox v. State* was reviewed, and the conclusion there reached, that the legislature, not under its general grant of authority, but under the special grant of power over amendments to the constitution, might amend a section of the bill of rights, was denied. In the latter case, however, it was held that no power was in the possession of the legislature to repeal or change any provision of the bill of rights, "when acting either in the exercise of ordinary legislative authority, or in the exercise of the higher power specifically granted," to participate in the amendment of the constitution; and that such change could only be made by the people through the agency of a convention.

In *City of Chicago v. Reeves* (1906), 220 Ill. 274, 77 N. E.

237, on page 288, it is said: "The right to propose amendments to the constitution is not the exercise of legislative power by the General Assembly in its ordinary sense, but such power is vested in the legislature only by the grant found in the constitution, and such power must be exercised within the terms of the grant."

In *Oakland Paving Co. v. Hilton* (1886), 69 Cal. 479, 514, 11 Pac. 3, we find the following expression of the supreme court of California: "It should be remembered that the legislature, in proposing amendments to the constitution, is not exercising legislative power. Such is the ruling of this court in *Hatch v. Stoneman* (1885), 66 Cal. 632 [6 Pac. 734], where it is held that the Governor has nothing to do with such proposals. The power given to the legislature is a grant of power. It has it not without the constitutional provision. The grant is given to be exercised in the mode conferred on the legislature by the constitution. It is so limited by the people acting in the exercise of their highest sovereign power. In such case, the mode is the measure of the power. Its action outside of the mode prescribed is as much a nullity as that of a board of supervisors of a city outside of the statute defining its power in regard to the grading of a street. The rule forcibly stated by Justice Coleridge in *Christie v. Unwin* (1845), 3 Perry & D. 208, as applicable to powers conferred by statute, is just as applicable here, for the constitutional provision is a statute ordained by a people as part of its paramount law. 'However high the authority,' says the learned Justice, in the case just cited, 'to whom special statutory power is delegated, we must take care that in the exercise of it, the facts giving jurisdiction plainly appear, and that the terms of the statute are complied with. This rule applies equally to an order of the lord chancellor as to any order of petty sessions.' The legislature, acting outside of the constitution, is without jurisdiction and its action null."

In a later decision of that court, in the case of *Livermore v. Waite* (1894), 102 Cal. 113, 36 Pac. 424, 25 L. R. A. 312, it was held that the power of the legislature to initiate any change in the existing organic law was a delegated power to be strictly construed, under the limitations by which it was conferred, and that it was not authorized to assume the functions of a constitutional convention. It was said: "In submitting propositions for the amendment of the constitution, the legislature is not in the exercise of its legislative power, or of any sovereignty of the people that has been intrusted to it, but is merely acting under a limited power conferred

upon it by the people. \* \* \* The extent of this power is limited to the object for which it is given, and is measured by the terms in which it has been conferred, and cannot be extended by the legislature to any other object, or enlarged beyond these terms."

In *Holmberg v. Jones* (1901), 7 Idaho 752, 65 Pac. 563, it was said by the supreme court of Idaho: "The power to propose amendments has been granted by the people to the legislature. While the power of the legislature to enact laws is inherent, so far as legislative enactment is concerned, yet the power to propose amendments to the constitution is not inherent. The power to make constitutions and to amend them is inherent, not in the legislature, but in the people."

The supreme court of Missouri, in the case of *Edwards v. Lesueur* (1896), 132 Mo. 410, on page 433, 33 S. W. 1130 (31 L. R. A. 815), which was a suit to enjoin the Secretary of State from discharging his duties in relation to the submission of constitutional amendments claimed to be invalid, said: "It is true the General Assembly can only propose amendments under the power delegated to it by the people. This power must be construed according to the general principles which govern courts in the construction of delegated powers. In the exercise of such power every substantial requirement must be observed and followed, or there can be no valid amendment. In respect to the mode of proposal and submission, the provisions of the constitution must be regarded as absolute. The courts should not hesitate to see that the Constitution is obeyed in these particulars." And again, 132 Mo. on page 441, 33 S. W. on page 1135, 31 L. R. A. 815: "The General Assembly in proposing amendments does not, strictly speaking, exercise ordinary legislative power. It acts in behalf of the people of the State under an express and independent power. The mode of its exercise is prescribed and must be observed."

In the case of *Commonwealth v. Griest* (1900), 196 Pa. 396, 46 Atl. 505, 50 L. R. A. 568, the supreme court of Pennsylvania directed a writ of mandamus to issue to compel the Secretary of State to perform his statutory duties in submitting an amendment which he had refused to discharge because the Governor had vetoed the amendment, and the court held that neither veto nor signing by the Governor could affect such proposed amendment, as amending the constitution was not lawmaking. It was said that the article of their constitution, similar to ours, which vested generally the legislative authority in the General Assembly, did not cover



fundamental legislation. But it was said: "On the contrary, the entire article is confined exclusively to the subject of legislation, that is, the actual exercise of the lawmaking power of the commonwealth in its ordinary acceptance. And it was said of the provision which empowered the legislature to frame and submit amendments of the constitution: "It is constitution-making, it is a concentration of all the power of the people in establishing organic law for the commonwealth. \* \* \* It is not lawmaking, which is a distinct and separate function, but it is a specific exercise of the power of a people to make its constitution."

The same coercive writ was issued to compel the Governor of Maryland to discharge a duty placed on him to order publication of proposed amendments, as a preliminary requirement to their submission to the voters, which he refused to discharge, because, he claimed, they were inoperative for not having been submitted to him for approval. It was held by the Supreme Court of that State that a proposal to make a change in the organic law was not legislation in the ordinary sense, and that it was not necessary to submit them to the Governor for any action. *Warfield, Governor v. Vandiver* (1905), 101 Md. 78, 60 Atl. 538, 4 Ann. Cas. 692.

The Supreme Court of Nebraska in *re Senate File 31* (1889), 25 Neb. 864, 41 N. W. 981, said: "It will be conceded that under our constitution it is unnecessary to submit a proposition to amend the constitution, duly passed by each branch of the legislature, to the Governor for his approval, as such proposition is not ordinary legislation."

In the Massachusetts Convention of 1820, Mr. Webster and Mr. Lincoln took the position that conferring the power on the legislature to prepare and propose amendments to the constitution was not giving authority to exercise legislative power in the ordinary sense; the former saying: "This was not an exercise of legislative power—it was only referring to some branch of the power of making propositions to the people." While the words of the latter were: "The proposing of amendments was not a subject of legislation." *Deb. Mass. Conv. 1820*, pp. 405, 407.

Quoting again from Jameson on Constitutional Conventions, in differentiating the functions of legislatures and conventions with relation to the species of law over which they have power, it is said on page 422: "Of these two species of law, the distinction between which has been already explained, it is the important thing to note, that the one denominated fundamental is, generally speaking, the work only of a Convention, a special and extraor-



dinary assembly, convening at no regularly recurring periods, but whenever the harvest of constitutional reforms has become ripe; while, on the other hand, the ordinary statute law, whose provisions are tentatory and transient, is, regularly at least, the work of a legislature—a body meeting periodically at short intervals of time. It is thoroughly settled that, under our Constitutions, State and Federal, a legislature cannot exercise the functions of a Convention—cannot, in other words, take upon itself the duty of framing, amending, or suspending the operation of the fundamental law.” And again, he says on page 211: “Whenever a Constitution needs a general revision, a Convention is indispensably necessary.” And in consonance with the principle that legislatures in their ordinary legislative capacity are not competent to frame or draft organic law, are these words of Cooley: “In accordance with universal practice, and from the very necessity of the case, amendments to an existing constitution or entire revisions of it, must be prepared and matured by some *body of representatives chosen for the purpose*.” Cooley, Const. Lim. 61. Where authority is specifically granted to the legislature by the constitution to prepare and submit amendments, that establishes its competency, and, to the extent of the specific authorization and within its limitation, it is always to be considered as chosen for the purpose.

Many of the constitutions, made and ordained in the early days of written constitutions in our country, were silent on the question of future changes, and we are informed by Jameson, at page 548: “But silence upon a subject of such importance was liable to misconstruction, and was therefore dangerous. Hence the policy of regulating by express constitutional provisions the exercise of so important a power soon began to be generally apparent. In several of the States the clauses of the Constitutions relating to amendments have been couched in negative terms, interdicting amendments except in the cases and modes prescribed. In a majority of the cases, however, they have been permissive, pointing out modes in which Conventions may be called, or specific amendments effected, without terms of restriction, or allusion to other possible modes. But, however liberal these provisions may seem to be, restriction is really the policy and the law of the country. By the common law of America, originating with the system we are considering, and out of the same necessities which gave the latter birth, it is settled, that amendments to our Constitutions are to be made only in modes pointed out or sanctioned

by the legislative authority, the legal exponent of the will of the majority, which alone is entitled to the force of law. The mode usually employed is that of summoning a Convention; and it is clear that no means are legitimate for the purpose indicated but Conventions, unless employed under an express warrant of the Constitution. The idea of the people thus restricting themselves in making changes in their Constitutions is original, and is one of the most signal evidences that amongst us liberty means, not the giving of rein to passion or to thoughtless impulse, but the exercise of power by the people for the general good, and, therefore always under the restraints of law. But, while the framers of our Constitutions have sought to avoid the dangers attending a too frequent change of their fundamental codes, they have adverted to an opposite danger, to be equally shunned—that of making amendments too difficult. With a view to obviate this danger, in all our late constitutions there have been inserted special provisions, the tenor of which will be explained hereafter. The general principle governing their selection, and, in truth, lying at the foundation of the whole subject, as a branch of practical politics, is this: Provisions regulating the time and mode of effecting organic changes are in the nature of safety-valves—they must not be so adjusted as to discharge their peculiar function with too great facility, lest they become the ordinary escape-pipes of party passion; nor, on the other hand, must they discharge it with such difficulty that the force needed to induce action is sufficient also to explode the machine. Hence the problem of the Constitution-maker is, in this particular, one of the most difficult in our whole system, to reconcile the requisites for progress with the requisites for safety. This problem cannot be yet regarded as solved, though we are doubtless approximating to a solution. Every new Constitution gathers up the fruits of past experience, and in turn contributes something to the common stock. We have reached such a stage that the provisions of our latest Constitutions may be considered as adequate to all ordinary exigencies of our condition. No community of American citizens would be badly provided for, were it compelled to accept any one of a score of Constitutions now in force amongst us, without modification, save in subordinate particulars touching local matters.” The author’s conclusion is, that the change or amendment of the written constitutions which prevail under the American system is confined to two modes: (1) By the agency of conventions called by the General Assembly in obedience to a vote of the people, and usually pursued when a general

revision is desired; and (2) through the agency of the specific power granted to the General Assembly by constitutional provision to frame and submit proposed amendments, which is considered preferable, when no extensive change in the organic law is proposed. And, it is scarcely necessary to add, the proposed fundamental law must be regularly ratified by the people. *Id.*, pp. 550, 611, 612.

Accompanying the grant of general legislative authority over the subject-matter of ordinary legislation found in Section 1 of Article 4, our Constitution, in Article 16, places with the legislature the following special power and duty in relation to fundamental legislation: "Section 1. Any amendment or amendments to this constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

"Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments which shall have been agreed upon by one General Assembly shall be waiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed."

The presence of this article in the Constitution fights against the contention that the general grant of legislative authority bears in its broad arms, by implication, any power to formulate and submit proposed organic law, whether in the form of an entire and complete instrument of government to supersede the existing one, or a single amendment. For if the General Assembly have the greater power, unfettered power, under the general grant, what necessity could there have existed for giving the lesser, special power, with the checks and limitations accompanying it? That both the general grant of legislative authority and the special

authorization to act in relation to amendments were deemed necessary by the framers of the Constitution, arises from the obvious fact that each involved a different subject-matter; the one, of ordinary lawmaking, and, the other, the change of organic law. The one involved, necessarily, a broad discretion, while the other merely gave a narrow, limited power, under guard, to aid the people in the exercise of their sovereign power over the structure of their government.

In *Morris v. Powell* (1890), 125 Ind. 281, on page 311, 25 N. E. 221, on page 227 (9 L. R. A. 326), which involved the validity of a registration law, it was said by Elliott, J.: "The question is one of power. If the Constitution authorizes such enactments as those contained in Section 13, the power exists, and the section must stand; if the Constitution does not authorize such a law, the power does not exist, and the section must fall. \* \* \* The power which the General Assembly assumed to exercise is not an ordinary legislative power, for, in assuming to legislate upon the subject of the qualifications of voters, that body entered into the domain of those in whom original power resides, and from whom all legislative powers are derived. The people control the subject of the right of suffrage, and legislative assemblies have only such power over that subject as the people have granted them by the organic law." And it may be said, with far greater force, that, in assuming to legislate in relation to structural changes in the government, the legislature is not acting within the power it takes under the general grant of authority to enact, alter and repeal laws under and pursuant to the Constitution. For, to deal with organic law—to determine what it shall be, when it needs change, the character of the change and to declare and ordain it—is peculiarly a power belonging to the people, and this fact they have declared, as we have seen, in the first section of the bill of rights.

The constitutional and legislative history of the State bears the strongest witness against the contention that the general grant of legislative authority carries the power to formulate and submit, at will, fundamental law to the people for their action. Power over the Constitution and its change has ever been considered to remain with the people alone, except as they had, in their Constitution, specially delegated powers and duties to the legislative body relative thereto for the aid of the people only. As illustrating the extent and boundaries of the general grant of legislative power in its relation to framing organic law, it is worth



while briefly to review those enactments which have given and continued the life of our State.

The act of congress of May 7, 1800, carved out of the Northwest Territory, Indiana Territory, and established a government for it similar to that of the Northwest Territory to begin its existence July 4, 1800 (R. S. 1843, p. 28). The ordinance of 1787, providing for the government of the Northwest Territory, provided that the legislative department "shall have authority to make laws, in all cases for the good government of the district not repugnant to the principles and articles in this ordinance established and declared" (R. S. 1843, p. 23).

When the embryo state was ready to take its place with the sisterhood of states, there was no assumption that its legislature was competent to form a Constitution for the people of Indiana Territory. On April 19, 1816, congress passed an act to enable the people of Indiana Territory "to form for themselves a Constitution and State government." And for this purpose the qualified voters of the territory were authorized to choose representatives to form a convention, which body was authorized to meet at the seat of government on the second Monday of June, 1816, and first determine whether it was expedient at that time to form a Constitution and State government; and it was provided that "if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and State government \* \* \* provided, that the same, \* \* \* shall be republican, and not repugnant to" the ordinance of 1787 (R. S. 1843, p. 33). Obviously it was not thought then that forming a Constitution was included in the power to enact ordinary legislation, or which it was proper to bestow upon a legislative body not specifically selected for that purpose. But it was recognized as a power residing in the people, and to be exercised by them, in the one facile and practical way, through representative agents selected by them for the very purpose. Under this authority and in this mode the people of the territory formed and ordained the first Constitution of the State. R. S. 1843 p. 41. The first section of Article 3 of that instrument vested the legislative authority of the new State in the General Assembly, in the same words that the grant was made to it in the existing Constitution. R. S. 1843 p. 44.

In relation to changes in the organic law, Article 8 of the Constitution of 1816 provided: "Every twelfth year after this constitution shall have taken effect, at the general election held for



Governor, there shall be a poll opened, in which the qualified electors of the State, shall express, by vote, whether they are in favor of calling a convention or not. And if there shall be a majority of all the votes given at such election, in favor of a convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be, to provide by law for the election of the members to the convention, the number thereof, and the time and place of their meeting; which law shall not be passed, unless agreed to by a majority of all the members elected to both branches of the General Assembly; and which convention, when met, shall have the entire power to revise, amend, or change the constitution." R. S. 1843 p. 57.

In 1828, pursuant to the foregoing provisions, the legislature submitted to the people the question as to whether or not a constitutional convention should be called. Only ten of the fifty-eight counties in the State appear to have voted upon the question, the total vote being, for a convention, 3,496, against a convention, 6,130. The people, therefore, affirmatively determined that no convention should be called. In 1840, at the end of the next twelve year period, the question was again submitted to the people, pursuant to the terms of Article 8, *supra*, the vote being, for a convention, 12,277, against a convention, 61,721, sixty-nine counties having participated in this vote, fourteen counties making no return thereon. In the face of this vote five to one against the calling of a constitutional convention, the legislature in 1846, not in accordance with, but independently of the terms of Article 8, again submitted the question to the people, at which time the vote resulted, for a convention, 33,175, against a convention, 28,842, in a total of 126,123 votes cast at the election. By recurring to Article 8 it will be perceived that in order to authorize the calling of a convention, a majority of the votes cast at an election held for the governorship must have been cast in favor of the convention. Inasmuch, therefore, as all the votes cast, both for and against the calling of a convention, in 1846, fell short of a majority of the votes cast for Governor at that election, the people failed to vote in favor of the calling of a constitutional convention.

Notwithstanding the people had upon these three separate occasions either voted against, or failed to vote by the required majority in favor of calling a convention, the legislature in 1849 again submitted the question for determination (see Acts of 1849, p. 36), at the annual election in August, 1849, at which the total vote cast for Governor was 149,774 (excluding Fayette county

which seems not to have made return of its vote). There was cast in favor of the convention, 81,500 votes, against it, 57,418 votes, showing a majority over all votes cast of 6,612. Pursuant to the authority given by this vote of the people, the General Assembly by an act approved January 18, 1850 (Acts 1850, p. 29), provided "for the call of a Convention of the people of the State of Indiana, to revise, amend, or alter the Constitution of said State." The body selected by the people as provided in that act formed the Constitution, which was submitted to and adopted by the people, and has existed as the organic law, without radical change, for more than sixty years. During the time when these persistent efforts of the General Assembly to get a vote of the people favorable to a revision or amendment of the Constitution by a convention, the obviously concordant opinion of the strong men of the time was that it could only so be made, and be made within the law. Had it been thought then that the general grant of legislative authority placed in the hands of the General Assembly the power to accomplish the same work which that body was asking the people to authorize a constitutional convention to do, it is not to be supposed that the fruitless efforts to secure a convention would have continued. But, on the contrary, it is highly probable that the General Assembly would itself have done the work of revision or reframing amendments, and thus have avoided the delay and the greater expense entailed by a convention. No one then claimed that the framing of fundamental law might be done by legislative act under the general grant of legislative authority. Even though the grant to the General Assembly of special authority to participate to a degree in organic lawmaking, and the specific duty of submitting every twelve years the question of whether the people desired a convention called, was, as to time, departed from by the General Assembly in 1846 and in 1849, they still looked to the people, in whom the right inhered and who alone could put life into fundamental enactments, for instruction and discretion; and, answering the mandate of the people's vote, they merely arranged the details for the selection by the people of a body of representatives for the special duty of drafting a revised or amended Constitution.

As we have seen, the provision of the existing Constitution, which vests legislative authority in the General Assembly, is identical with that of the Constitution of 1816. And if the construction put upon the provision by the people and the legislative department during the thirty-four years under the latter govern-

mental instrument, excluded any grant of power to frame a new Constitution, it would seem that such construction was carried with it into the present Constitution. For, it is a canon of construction that when the words of a statute, fundamental or ordinary, are brought forward into a new one, there comes with it the meaning which it then has. *State v. Ensley* (1911), 177 Ind. 483, 97 N. E. 113; 8 Cyc. 739.

Manifestly the framers of the present Constitution and the people of the State of that time did not understand that the grant of authority in Section 1 of Article 4 empowered the General Assembly to frame a new Constitution, and submit it in the manner proposed, in whole or in part. Had it carried that power in its words, no necessity could there have been for Article 16, which specifically grants power to the legislature to frame and propose amendments in a more difficult mode, and so participate with the people in fundamental enactments. Great and illustrious men were among the membership of the Constitutional Convention of 1850. Men who subsequently occupied the highest offices in the gift of the people of the State, executive and judicial, and who served the State and Nation in exalted places in the Federal government. But no public service of any of them has proven of greater or more lasting benefit to the people than the organic law which they framed. It is inconceivable that they intended that the general grant of legislative authority should vest in the General Assembly plenary power to draft a new Constitution, and provide for its submission to the people at the same session and in the same Constitution throw around the preparation, and submission of a single amendment, the restrictions requiring time for discussion, consideration and deliberation involved in Article 16. An examination of the journal and debates of that body shows that provisions were offered by two different members to be embodied in the revised Constitution, which would permit future changes in the Constitution to be framed by the General Assembly and submitted to the people at the ensuing general election, just as it is sought to be done by the act under consideration. That they received little favorable consideration from the convention, appears from the expressed thought, and the action of that body on the subject-matter, which is gathered from its journal and debates.

In the first days of the convention, it appears on page 66 of the Journal of that body that Mr. Tague, a member from Hancock county, offered a resolution to amend Article 8 of the existing Constitution to permit the legislature at any regular session to

propose one amendment to be published with the laws and submitted to a vote of the people at the next general election, and if approved by two-thirds of the votes cast, to become a part of the Constitution. And it appears on page 68 that Mr. Steele, the member from Wabash county, introduced a resolution, relating to an amendment of the Constitution, reading as follows: "Resolved, that the committee on future amendments to the Constitution, inquire into the expediency of so amending the Constitution, that hereafter at any time when the citizens of Indiana present to the legislature a petition or memorial with fifty thousand signers, praying for an amendment to the Constitution, setting forth specifically such amendment, that the legislature shall provide by law for the said citizens to vote on such proposed amendment, and if adopted, become a part of the Constitution, and be engrafted by the next legislature into the Constitution."

On page 69 of the Journal we find that Mr. Frisbie, the member from Perry county, presented a resolution, requiring the same committee to inquire into the expediency of inserting a provision for amendment, substantially as follows: "That whenever the legislature shall become satisfied that a majority of the people of the State are dissatisfied with any portion of the Constitution, it shall be their duty, by joint resolution or otherwise, to present to the voters of the State, in a distinct form, such proposed change or changes to be acted upon by the voters at the polls at the next general election, and if a majority of all the votes given at such election be given in favor of such change or changes and so made to appear to the next ensuing legislature, it shall be the duty of the Executive to issue his proclamation declaring said amendment or amendments to be a part and parcel of the Constitution."

Later in the existence of the convention, as we find on page 444 of the journal, Mr. Read, of Clark county, submitted a resolution embodying a proposed article relating to future amendments, which gave power to the legislature to propose amendments if agreed to by two-thirds of the members elected to each house and approved by the Governor. They were then to be published in at least one newspaper in each county for three months before the next general election, and if the legislature then chosen should approve them by a majority of the members elected to each house, they were to be again published, and submitted to a vote of the electors and, if ratified by a majority, to become a part of the Constitution. But it also provided that amendments should not be so proposed oftener than once in ten years.



These resolutions all went by reference to the committee on future amendments, and that committee reported to the convention, and recommended for passage, by it as a part of the amended Constitution, the following article in two sections: "Section 1. Whenever two-thirds of all the members elected to each branch of the General Assembly shall think it necessary to call a Convention to alter or amend this Constitution, they shall recommend to the electors at the next election of members of the General Assembly to vote for or against a Convention; and if it shall appear that a majority of all the electors of the State voting for representatives have voted for a Convention, the General Assembly shall, at its next session, call a Convention for the purpose of revising, altering or amending this Constitution. Sec. 2. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly, and if the same shall be agreed to by two-thirds of all the members elected in each of the two houses, such proposed amendment or amendments shall be referred to the next regular session of the General Assembly, and shall be published at least three months previous to the time of holding the next election for members of the House of Representatives; and if at the next regular session of the General Assembly after said election, a majority of all the members elected in each branch of the General Assembly shall agree to said amendment or amendments, then it shall be their duty to submit the same to the people at the next general election for their adoption or rejection in such manner as may be prescribed by law; and if a majority of all the electors voting at said election for members of the House of Representatives, shall vote for such amendment or amendments, the same shall become a part of the Constitution. If two or more amendments be submitted at the same time, they shall be submitted in such manner that the people shall vote for or against each of such amendments separately, and while an amendment or amendments which has been agreed upon by one General Assembly is waiting the action of a succeeding Assembly, or undergoing the final consideration of the people, no additional amendment or amendments shall be proposed."

The report of the committee was concurred in, and the article was passed to a second reading. Convention Journal, p. 693. When the article came up on second reading, Mr. Bascom, the member from the district of Adams and Wells counties, unsuccessfully moved to strike out Section 1 and insert the following: "Section 1. Every sixteenth year after this Constitution shall



have taken effect, at the general election, held for Governor, there shall be a poll opened in which the qualified electors of the State shall express by vote, whether they are in favor of calling a Convention or not; and if there should be a majority of all the votes given at such election, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide by law for the election of the members to the Convention, the number thereof, and the time and place of their meeting; and which Convention, when met, shall have it in their power to revise, amend or change the Constitution." Convention Journal, p. 830. The first section as reported by the committee was then rejected by the convention. Convention Journal, p. 831. The second section being taken up for consideration, Mr. Stevenson, of Putnam county, moved to amend by making a majority vote instead of two-thirds of the members elected in each of the two houses sufficient to pass a proposed amendment. Mr. Owen, of Posey county, moved to amend this by striking out the section and inserting instead the following: "Sec. 2. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and, if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon and referred to the legislature to be chosen at the next general election, and if in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such amendment or amendments to the qualified electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution." Convention Journal, p. 832.

Mr. Newman, a member from Wayne county, moved to amend the amendment offered by Mr. Owen by striking it out and inserting therefor the following: "The General Assembly may at its first session after six years from the adoption of this Constitution, and every tenth year thereafter, by a vote of three-fifths of each branch thereof recommend to the electors of this State, any alteration or amendment to this Constitution, and provide for submitting any such alteration or amendment to a vote of such electors, and if a majority of such electors shall vote in favor of such alteration or amendment then the same shall be adopted and form a part of this Constitution." Mr. Newman's amendment failed, and that of Mr. Owen was adopted and engrossed for third read-

ing. *Convention Journal*, pp. 831, 832, 833; *Debates of the Convention*, 1915, 1918.

The second section being taken up on third reading, Mr. Pettit, a member from Tippecanoe county, moved to recommit it with instructions to strike it out, and insert instead the following: "No amendment shall be made to this Constitution, unless the same shall be called for and approved by a majority of all the voters of this State." Mr. Howe, of La Grange county, moved to amend this proposal, by adding to it the following: "And once in every twelve years after the adoption of this Constitution, the General Assembly may pass an act for the call of a Convention, and if the next General Assembly shall, by a majority vote, adopt the said act, it shall then provide by law for the opening of a poll, in which the qualified electors of the State shall express by vote, whether they are in favor of calling a Convention or not, and if a majority of all the votes given at such election be in favor of calling a Convention, then such Convention shall be called, which Convention shall have the power to revise, amend, or change the Constitution; but no amendment shall be proposed or made, nor shall a Convention be called, otherwise than as in this article expressly provided." Both propositions failed, and the section was not recommitted, but passed and referred to the committee on revision, arrangement and phraseology by a vote of 77 to 45. *Convention Journal*, pp. 837, 838, 839. Later, an additional section, proposed by Mr. Ritchey, of Johnson county, the chairman of the committee, was adopted, and it reads as follows: "Section 5. If two or more amendments be submitted at the same time, they shall be submitted in such manner that the people shall vote for or against each of such amendments separately; and while an amendment or amendments which has been agreed upon by one General Assembly is waiting the action of a succeeding General Assembly, or undergoing the final consideration of the people, no additional amendment or amendments shall be proposed."

The following offered as an additional section by Mr. Helmer, of Lawrence county, was rejected: "Sec. 6. Every tenth year after the adoption of this Constitution, at the general election held therein, there shall be a poll opened in which the qualified electors of the State shall express by vote whether they are in favor of calling a Convention or not; and if there should be a majority of all the votes given at such election in favor of a Convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide by law for the election of the delegates

to the Convention, the number thereof, which shall not exceed one from every Senatorial district into which the State is at the time divided, and the time and place of their meeting, which Convention, when met, shall have power to revise, amend, or change the Constitution." Convention Journal, pp. 841, 842.

The committee on revision, arrangement and phraseology reported back to the convention the provisions for amendment and change of the Constitution, proposed by Mr. Owen and Mr. Ritchey, with slight changes in the phraseology, and they became respectively Sections 1 and 2 of Article 16 of the Constitution as it now is. Convention Journal, p. 976.

The debate in the convention, during the consideration of these various methods of providing for change or amendment of the Constitution in the future, is illuminating, and makes clear the purpose of that body, which, by express representative authority, was exercising the sovereignty of the people in amending and revising their fundamental law. Mr. Ritchey, the chairman of the committee, defended its report recommending the two sections. He favored the two methods of making amendments, that, provided by the first section, for calling a convention when general and numerous amendments were contemplated, and the one, provided by the second section, when isolated amendments were deemed desirable. The latter method was to save the greater expense and inconvenience of a convention. He defended the requirement of a vote of two-thirds of the members of the two houses of the legislature, on the ground that it was "a necessary check upon the too frequent introduction of propositions to change the provisions of the Constitution." "If there is anything that should be held sacred," he said, "and scrupulously guarded against hasty and inconsiderate changes, it is the fundamental law." He expressed regret that the convention had rejected the provision embodied in the first section for amending by convention, and said: "I would prefer, myself, that the people should have the power to call another convention to amend the Constitution."

In advocating the adoption of his proposal above set forth, Mr. Newman expressed his opposition to the frequent changes in the organic law made possible by the proposed Section 2 of Mr. Owen's proposed amendment of it. He thought that to permit the legislature by a three-fifths vote to propose amendments at intervals of ten years only would insure that a healthy and matured public sentiment on the subject would prevent inconsiderate proposals for amendment. Mr. Owen, in answer, agreed that it was desir-

able that there should not be too great instability in regard to the Constitution; but he opposed the proposition to attempt to restrict amendments to periods of ten years, which made it too difficult to amend the organic law, and he also opposed the proposition of Mr. Pettit, which infringed stability. He said, among other things: "But I say if you insert such a provision as this, placing no greater check than that of requiring two successive legislatures to act affirmatively upon the question before it shall be submitted to the people, I am convinced that it will be entirely satisfactory. It is very well known that I am not conservative in my opinions. I believe in progress and advancement in the science of government as well as all other sciences, physical and moral. But while I am willing that changes and amendments should from time to time be made, yet I would not have them made without due consideration. I would have at least the meeting of one legislature intervening between the time of the first proposing of an amendment and the time of its final adoption. I believe if we adopt the section as it stands, we will have a just medium between the proposition of the gentleman from Tippecanoe, which I hold does not interpose a sufficient check, and the proposition of the gentleman from La Grange which I think wholly impracticable." Mr. Kelso, of Ohio and Switzerland counties, and Mr. Steele supported the amendment of Mr. Owen on the ground that it provided an easy and safe mode of change or amendment. Mr. Pettit advocated leaving the greatest freedom of action to the people in initiating and making changes in the Constitution.

Mr. Howe expressed himself in favor of amendment by convention alone, and then only at periods of twelve years, when the people had voted in favor of such convention. Mr. Rariden, of Wayne, opposed any provision permitting amendment or change oftener than at periods of five years, and favored action by convention as being the most satisfactory. *Debates of the Convention*, pp. 1913-1918, 1938-39.

It will be noted that the provision proposed by Mr. Read was, with the exception of the last part of it, which limited the right of the legislature to propose amendments to periods of ten years, similar to the one which subsequently met the approval of the convention, and became a part of the Constitution. In the discussion of it earlier in the convention, it seemed to be agreed that if the Constitution of 1816 had contained a similar provision for amendment by legislative initiation, the convention then being held would have been wholly unnecessary. Mr. Owen agreed that



there should be provision for amendments to be proposed by the legislature, and that such proposed amendments should be approved by two successive legislatures, but he opposed that part limiting action to ten year periods. Mr. Borden of Allen county, expressed his disapproval of this or any proposition to confer upon the legislature any power to frame and submit amendments, and favored, in the interest of stability, amendment by convention alone, to be called only at long intervals, and after a vote of the people favorable to the calling of a convention had been taken. *Debates of Conv.* pp. 1258, 1260.

What the words of the Constitution of 1851 meant at the time it was framed by the representatives of the people, taking counsel together in convention for the good of the State, and speaking with their voice, it must mean now to the people, and to all the departments of their government in the hands of their agents. For, as said by the supreme court of Michigan, speaking through Cooley, J.: "Constitutions do not change with the varying tides of public opinion and desire; the will of the people therein recorded is the same inflexible law until changed by their own deliberative action; and it cannot be permissible to the courts that in order to aid evasions and circumventions, they shall subject these instruments,

\* \* \* to a literal and technical construction, as if they were great public enemies standing in the way of progress, and the duty of every good citizen was to get around their provisions whenever practicable, and give them a damaging thrust whenever convenient. They must construe them as the people did in their adoption, if the means of arriving at that construction are within their power." *People ex rel. v. State Treasurer* (1871), 23 Mich. 499, 506.

There can be little doubt but that the framers of the revised Constitution of 1851 believed that in Article 16 they had provided an orderly method for making all the changes in the organic law which might become necessary. If they were conscious of the accomplishment of a good work, they were justified. All of the best principles of a representative democracy were declared and guaranteed. Governmental power was divided, and placed in separate agencies, and other checks against the growth of power into absolutism were provided. That progress and growth might require change in some minor respects was recognized, and such change provided for in Article 16. It is manifest that they held the views relating to future changes in the organic law which influenced the convention of Massachusetts of 1820, of which Daniel



Webster was a member, and chairman of the committee on future amendments, which reported in favor of the legislative mode of proposing amendments under guards and restrictions, and inserted no provision for calling a convention. In explaining the reason for the action, Mr. Webster said: "It occurred to the committee that, with the experience which we had had of the Constitution, there was little probability that, after the amendments which should now be adopted, there would ever be any occasion for great changes. No revision of its general principles would be necessary, and the alterations which should be called for by a change of circumstances would be limited and specific. It was, therefore, the opinion of the committee that no provision for a revision of the whole Constitution was expedient, and the only question was in what manner it should be provided that particular amendments might be obtained. It was a natural course, and conformable to analogy and precedent in some degree, that every proposition for amendment should originate in the legislature under certain guards and be sent out to the people." *Deb. Mass. Conv. 1820*, pp. 413, 414. Another thing is clearly disclosed by the review given of the proceedings of the convention on this subject, and that is, that it was the judgment of that body that an easy and wholly adequate method of making needed changes in the Constitution had been provided. Evidently, individual members thought it too easy.

In years, it came about that there was the pressing need and demand for changes in the Constitution, which progress and growth bring, in some particulars relating to the time of holding elections, the qualifications of voters, courts, the indebtedness of cities, fees and salaries of public officers, and other matters. The legislature of 1877, under the power conferred by Article 16, framed seven different amendments, and referred them to the next General Assembly, which performed its function in accordance with the constitutional authorization, and submitted them to the people for adoption. *Acts 1879*, p. 25. They received a majority of the votes cast on them, but not a majority of all the votes cast at the election. A question arose over their adoption, and the case of *State v. Swift* (1880), 69 Ind. 505, presented that question to this court for determination. It was held, that, not having received a majority of all the votes cast at the election in which they were voted on, they had failed of adoption. It is a part of the history of the State that the matter of the failure of the ratification of the proposed amendments was widely and well considered and

discussed during the period preceding the ensuing general election, so that the public mind was involved in a study and consideration of fundamental legislation. Subsequently, the General Assembly of 1881 again provided for submission of these amendments at a special election, and they were ratified, and became a part of the organic law of the State.

Again, in 1903, the legislature, acting under the provisions of Article 16, initiated a proposed amendment to vest in the legislature authority to fix the qualifications for admission to the bar, and the General Assembly at the ensuing session in 1905 approved the action, and provided for the submission of the proposed amendment at the general election in 1906. It received a majority of the votes cast on it, but not a majority of the votes cast at the election, and failed of adoption. Once again<sup>5</sup> the General Assembly, at its session in 1909, referred this amendment to the will of the voters at the general election in 1910, and once more it received a majority of the votes cast thereon, but not a majority of the votes cast at the election. And so it has been assumed that it stands obstructive of further proposals for amendment, by reason of the provision of Section 2 of Article 16, while waiting definitive action by the people.<sup>6</sup> During all the time that has witnessed difficulties in securing consummation of amendments to the Constitution in the mode allowed and provided by that instrument, no suggestion has come from any citizen, skilled in the science of government or not, that the General Assembly possessed the power, under the general grant of legislative authority, to frame amendments into the existing Constitution, and submit them as a new Constitution, as now proposed. Nor has the claim ever been advanced, that the legislature had power to draft and submit proposed organic law, other than that specifically given by Article 16.

This contemporaneous construction, which has persisted for nearly a century, speaks loudly in harmony with reason and the sound principles of representative democracy against the possession of the power claimed. The assertion of the power by the General Assembly of 1911, was not born of any grant to the legislative department, either expressly, generally or by any implication which is permissible. But by taking cognizance of the history of the

5. This decision, as originally prepared and reported in the *Northeastern Reporter*, contained the following sentence immediately following the word "adoption": "The General Assembly of 1907 again placed it before the voters at the general election in 1908, and again it failed by reason of not receiving a majority of all the votes cast at the election."

6. This sentence originally read as follows: "And so it stands obstructive of further proposals for amendment, by reason of the provision of Section 2 of Article 16, while waiting definitive action by the people." On further consideration and study, Judge Cox concluded that the lawyers amendment was not pending.

time, we know that amendments, which have been proposed in the orderly way by the General Assembly under constitutional direction, have failed of adoption, not through any defect in the mode provided by the Constitution for making the amendment, but through an indifference or lack of interest on the part of the people themselves in the proposed change, or through a failure of the legislature to place them before the people for ratification at a special election, where their interest would not be alienated by the other interests involved in a general election. And we are asked to raise the power from the general legislative authority by implication, to serve convenience and expedition in making organic change. If it were conceded that an easier and quicker mode of change is desirable, a concession not permissible, if the views of the greatest writers on questions touching government under written constitutions are of force, a canon of constitutional construction forbids the implication of the authority, for it is the rule that where the means by which the power granted shall be exercised as specified, no other or different means for the exercise of such power can be implied, even though considered more convenient or effective than the means given in the Constitution; and the Constitution gives special power to the legislature, and provides the means of exercising it, to effect needed changes in the organic law. Should the General Assembly ignore the provisions of the Constitution in relation to drafting and submitting amendments, and at one session frame one or twenty proposed amendments, and provide for the submission at the next following general election, it would be clear, beyond all contention, that they would be acting without power, and the act providing for the submission a mere nullity. How can it be possible, then, that it can at one session incorporate the changes, twenty-three in number, in a copy of the existing Constitution, designate its work a "proposed new Constitution," and incorporate it in a bill, sending it to the people at the next ensuing general election for their adoption or rejection, as it is sought to do by chapter 118? The power cannot inhere in the General Assembly to do the latter, if not the former. To grant the contention of appellant's learned counsel would be to concede that a General Assembly was clothed with power to draft an amendment or a new Constitution, and, in the first days of its session to pass an act submitting it to the people at a special election in thirty days, or ten days; and if it received the approval of a majority of those voting at the election, though a small minority of the voters of the State, ordain it as organic law before the end of the session. This possibility illustrates badly, at once, the un-

soundness of the contention, and the wisdom of the framers of the Constitution in guarding changes of that instrument. The great men who builded the structure of our State in this respect had the mental vision of a good Constitution, voiced by Judge Cooley, who has said: "A good Constitution should be beyond the reach of temporary excitement and popular caprice or passion. It is needed for stability and steadiness; it must yield to the thought of the people; not to the whim of the people, or the thought evolved in excitement or hot blood, but the sober second thought, which alone, if the government is to be safe, can be allowed efficiency."

\* \* \* Changes in government are to be feared unless the benefit is certain. As Montaign says: 'All great mutations shake and disorder a State. Good does not necessarily succeed evil; another evil may succeed and a worse.' " Am. Law Rev. 1889, p. 311.

It was the thought of the people, the sober second thought, that the framers of our Constitution invoked by the provision which they inserted for amendment and change; and for this, in the people and their representatives as well, they provided for the delay embodied in Article 16, for that discussion and consideration which would bring it forth. They knew the truth expressed by Prof. Lieber, that an election which takes place to decide on the adoption or rejection of a fundamental law can have no permanent value whatever unless the question has been fairly before the people for a period sufficiently long to discuss the matter thoroughly, and under circumstances to allow a free discussion. Civil Liberty & Self-Government, p. 414.

The question is one of power to *draft* organic law. Of such power the legislature has only that measure expressly granted to it by the people speaking through the Constitution; and that is to be exercised strictly in the mode provided.

The proposed "new Constitution," incorporated in chapter 118 for submission, carries in its terms a confession, if not a lack of power in the General Assembly to formulate and submit it, surely of the unwisdom of the practice, for in that part of its provisions devoted to the future changes, the following is found: "No new Constitution shall be submitted to the electors of this State for ratification and adoption or rejection, until by virtue of an act of the General Assembly, a majority of the legal voters of the State have declared in favor of a constitutional convention; when and whereupon, such constitutional convention shall be convened in such manner as the General Assembly may provide, but any Constitution by such convention proposed shall be submitted to the



voters of this State for ratification or rejection at a special election as may be ordered by the General Assembly." Acts 1911, p. 240.

The learned counsel for appellants contend that no restrictions upon the making of a new Constitution are imposed by the present Constitution, and it is insisted that the action of the legislature in the submission to the people in 1846, 1847, and 1849, at times not specifically authorized by the Constitution of 1816, of the question whether they desired a convention called to revise or amend the existing Constitution, furnished a clear precedent for the action of the General Assembly of 1911. To neither contention does our judgment compel or permit assent. As to the first, we have seen the general grant of legislative authority does not include the formulation of organic law; and we look for no restrictions in that grant, upon the matter of Constitution-making, for that is a power inhering in the people, as declared, as we have seen, in the first article of the Constitution. "Prohibitions are only important where they are in the nature of exceptions to a general grant of power; and if the authority to do an act has not been granted by the sovereign to its representative, it cannot be necessary to prohibit its being done." Cooley's Const. Lim. p. 243. And again we find in the same work on page 245 the following: "And however proper and prudent it may be expressly to prohibit those things which are not understood to be within the proper attributes of legislative power, such prohibition can never be regarded as essential, when the extent of the power apportioned to the legislative department is found upon examination not to be broad enough to cover the obnoxious authority. The absence of such prohibition cannot by implication, confer power." To the second contention, it may be answered, that the General Assembly, in the action taken in those years, made no attempt to assume the power, under the general grant of authority to legislate, to formulate a new Constitution, or revise the existing one. It merely asked the people to express their will in relation to calling a convention to revise or amend the Constitution, to be expressed through the ballot, and when it was expressed it was a warrant and a command which the legislative agency carried out as given. Under such circumstances, the calling of a convention, as Jameson in his work shows, is in accordance with sound political principles, and a well-recognized and established practice. And the rule thus established in American constitutional law by the evolution of the constitutional convention from the two revolutionary conventions of England in 1666 and 1689, he shows is applicable to states like ours, having a limited provision for amendment, through the in-



initiative of the legislature, but no provision for a convention for a general revision. But we know of no authority, and counsel have exhibited none to us, to the effect that when the government of a State has been instituted under a written constitution, delegating powers to agents, with limitations and checks thereon, the legislature takes plenary power at will, under its general grant of legislative authority, to prepare and submit to the people proposed organic law. The formation of constitutions in the revolutionary and reconstruction periods of our history, and instances such as that involved in the case of *Brittle v. People* (1873), 2 Neb. 198, which involved the validity of a constitution submitted to the people by the territorial legislature, and by which the State government was instituted, are obviously distinguishable. There existed in Nebraska at the time of the decision of that case no State constitution to designate the legislative authority, or limit its exercise. By the institution of government under a written constitution the people have bound, not alone their agents, but themselves as well, until that instrument is changed by orderly method; and of these the two exist! The convention, where extensive amendment or revision is desired, and the specifically granted legislative mode, when few and comparatively simple amendments are deemed desirable. As said by the Supreme Court of Pennsylvania, in *Woods's Appeal*, (1874), 75 Pa. 59: "No argument for the implied power of absolute sovereignty in a convention can be drawn from revolutionary times, when necessity begets a new government. Governments thus accepted and ratified by silent submission afford no precedents for the power of a convention in a time of profound tranquillity, and for a people living under self-established, safe institutions."

It would not be practicable, if possible, in a written constitution, to specify in detail all of its objects and purposes, or the means by which they are to be carried into effect. Such prolixity in a code designed as a frame of government has never been considered necessary nor desirable. Therefore, constitutional powers are often granted or restrained in general terms, from which implied powers and restraints may necessarily arise. It is an established rule of construction, that where a constitution confers a power, or enjoins a duty, it also confers, by implication, all powers that are necessary for the exercise of the one, or for the performance of the other. But this rule cannot serve to admit, by implication, within the scope of ordinary legislative authority, the extraordinary power to participate in Constitution-making, by framing and submitting a new constitution. Moreover, this rule of

construction is coupled with another equally well established, the one above referred to, that where the means by which a power granted shall be exercised are specified, no other or different means for the exercise of the power can be implied, even though considered more convenient, or effective than the means given in the constitution. 8 Cyc. 742. The thing attempted to be done by the General Assembly is merely to prepare and propose changes in the organic law, and submit their work to the people in a quicker and easier way than that provided by the express provision, and the fact that it takes the form of a complete constitution cannot prevent the application of the rule.

We think it has been made to appear, indeed, that by the very strongest implication the power claimed is denied the legislature, and not given to it. We have seen that the intent of the framers, and the spirit which entered into Article 16 when it was prepared and agreed to by the representatives of the people in the business of constitution-making in the convention of 1850, were directly against such action as that taken by the General Assembly, and in such case the words of the highest court of New York are applicable: "A written constitution must be interpreted and effect given to it as the paramount law of the land, equally obligatory upon the legislature as upon other departments of the government and individual citizens, according to its spirit and the intent of its framers, as indicated by its terms." *People v. Albertson* (1873), 55 N. Y. 50, 55.

"We must not forget that a constitution is the measure of the rights delegated by the people to their governmental agents and not of the rights of the people. \* \* \* The implied restraints of the constitution upon legislative power may be as effectual for its condemnation as the written word, and such restraints may be found either in the language employed, or in the evident purpose which was in view and the circumstances and historical events which led to the enactment of the particular provision as a part of the organic law." *Rathbone v. Wirth* (1896), 150 N. Y. 459, 470, 483, 45 N. E. 15, 34 L. R. A. 408.

If the power to draft and submit to the people organic law is embraced in the broad bestowal of "the legislative authority of the State," made in Section 1 of Article 4, where is the limitation on it, save that of the Constitution of the United States? What check is laid upon the use of the power? There is none, for all the checks and limitations which the people in their Constitution have placed upon the legislature, are upon the exercise of the power over ordinary legislation, and have no relation to fundamental legislation.

The legislature being supreme and sovereign in the exercise of the legislative authority, save only as it is limited by the Constitution of the United States, the laws and treaties made under it, and the limitations stated in our state Constitution, if its general authority includes the subject-matter of organic legislation, why submit the "new Constitution" to the people at all? For the Federal Constitution or laws do not prohibit doing so, and no limitation is found in Article 4 of our own Constitution, which places a ban upon the action.

It must be remembered that the Constitution is the people's enactment. No proposed change can become effective unless they will it so through the compelling force of need of it and desire for it. We have not heard the voice of the people raised in a demand for a new Constitution. And so we doubt if there is reason for applying the doctrine of construction *ab inconvenienti* to the existing Constitution to hurry to the people organic change which they have not called for. That the Constitution may need amendment, may be true. But there has never been a time when the people might not, if they pleased and if they had believed it necessary, have made any change desired in the orderly ways provided. That they have not done so, and that the General Assembly may believe good will follow by deviating from slow and orderly processes, will not justify a construction of the Constitution which does violence to its intent and express provisions.

In Cooley's Const. Lim. (7th Ed.) p. 107, note, it is said: "We agree with the Supreme Court of Indiana, that, in construing constitutions, courts have nothing to do with the argument *ab inconvenienti*, and should not 'bend the Constitution to suit the law of the hour'; Greencastle Township v. Black (1854), 5 Ind. 557, 565; and with Bronson, C. J., in what he says in Oakley v. Aspinwall (1850), 3 N.Y. 547, 568: 'It is highly probable that inconveniences will result from following the Constitution as it is written. But that consideration can have no force with me. It is not for us, but for those who made the instrument, to supply its defects. If the legislature or the courts may take that office upon themselves, or if, under color of construction, or upon any other specious ground, they may depart from that which is plainly declared, the people may well despair of ever being able to set any boundary to the powers of the government. Written constitutions will be more than useless. Believing as I do that the success of free institutions depends upon a rigid adherence to the fundamental law, I have never yielded to considerations of expediency in ex-

pounding it. There is always some plausible reason for latitudinarian constructions which are resorted to for the purpose of acquiring power; some evil to be avoided or some good to be attained by pushing the powers of the government beyond their legitimate boundary. It is by yielding to such influences that constitutions are gradually undermined and finally overthrown. My rule has ever been to follow the fundamental law as it is written, regardless of consequences. If the law does not work well, the people can amend it; and inconveniences can be borne long enough to await that process. But if the legislature or the courts undertake to cure defects by forced and unnatural constructions, they inflict a wound upon the Constitution which nothing can heal. One step taken by the legislature or the judiciary, in enlarging the powers of the government, opens the door for another which will be sure to follow; and so the process goes on until all respect for the fundamental law is lost, and the powers of the government are just what those in authority please to call them.' "

The sound rule which, as we have seen, is approved by Mr. Jameson, and which must be applied to the determination of the question, is well stated in 6 American & English Encyclopedia of Law (2d Ed.) p. 902, as follows: "The proposal of amendments to the Constitution is not a power inherent in the legislative department, but must be conferred by a special grant of the Constitution, and in the absence of such a provision the legislature has no capacity thus to initiate amendments. On the other hand, long-established usage has settled the principle that a general grant of the legislative power carries with it the authority to call conventions for the amendment, or revision of the Constitution; and even where the only method provided in the Constitution for its own modification is by legislative submission of amendments, the better doctrine seems to be that such provision, unless in terms restrictive, is permissive only, and does not preclude the calling of a constitutional convention under the implied powers of the legislative department."

It is the contention of appellants' counsel that the present Constitution provides how amendments *may* be made, but does not prescribe how they *shall* be made; and that therefore, if chapter 118 (Acts 1911, *supra*), shall be considered as an attempt to propose amendments to the organic law, the provisions of Article 16 are not violated. As we have seen, no pretense was made of complying with the provisions of Section 1 of the article, requiring amendments to be passed upon by two General Assemblies,



and entering the proposed change upon the journals, together with the yeas and nays. \* \* \* The rules of constitutional interpretation above referred to apply with compelling force to overthrow this contention. And judicial and commentatorial utterance on the precise question is overwhelmingly against the contention. In Jameson on Constitutional Conventions the rule is stated on page 615 as follows: "In a previous section it was said, that the power given to a legislature to propose to the people amendments to the Constitution, is not an incident to the general grant of legislative power, but, if it exist at all, rests upon some special constitutional provision; in other words, that it is a statutory power. From this it follows that, like all statutory powers, it must be strictly pursued. So far there has been little or no controversy."

The rule is sustained by *State v. Swift* (1880), 69 Ind. 505, in which this court declared on page 519 in the opinion of the court by Biddle, C. J., who was a member of the constitutional convention of 1850-51: "The people of a state may form an original constitution, or abrogate an old one and form a new one, at any time, without any political restriction except the Constitution of the United States; but if they undertake to add an amendment, by the authority of legislation, to a Constitution already in existence, they can do it only by the method pointed out by the Constitution to which the amendment is to be added. The power to amend a Constitution by legislative action does not confer the power to break it, any more than it confers the power to legislate on any other subject, contrary to its prohibitions."

And again, in the opinion of this court in the case entitled (*In re Denny* [1901], 156 Ind. 104, 59 N. E. 359, 51 L. R. A. 722), it was said by Baker, J., who spoke for the court: "It is only by virtue of the Constitution's command to that body that the proposed amendment may be submitted by legislative act."

\* \* \*

One of the latest expressions of the rule by the courts of the country relating to amendment and change of Constitutions by the legislative mode, is the following from *McBee v. Brady, Gov.*, *supra*: "The Constitution is the fundamental law of the State. It received its force from the express will of the people, and in expressing that will the people have incorporated therein the method and manner by which the same can be amended and changed, and when the electors of the State have incorporated into the fundamental law the particular manner in which the same may be altered or changed, then any course which disregards that express



will is a direct violation of that fundamental law." A law that is unconstitutional is so because it is either an assumption of power not legislative in its nature, or, because it is inconsistent with some provisions of the Federal or State Constitution. *Commonwealth v. Maxwell* (1856), 27 Pa. 444.

Sound legal and political principles, the history of our political life as a State, and the authority of judicial and commentatorial opinion, all unite in forcing the conclusion that the act of 1911, *supra*, is invalid for want of power in the General Assembly to draft an entire Constitution, and forthwith submit it to the people under its general legislative authority if the instrument be conceded to be a new Constitution, and not merely amendments; and that if it be considered as merely a series of amendments, it is a palpable evasion and disregard of the requirements and checks of Article 16, and is, for that reason, void. This conclusion renders unnecessary any consideration of the other objections raised against the validity of the act.

But counsel for appellants, with great earnestness and signal ability, both in argument and briefs, insist that this court is without jurisdiction to determine this question. Since the lucid exposition of the power of courts to declare an act of legislation void, when in excess of the power of the legislature, or in conflict with some express provision of the Constitution, which was given by Chief Justice Marshall, in *Marbury v. Madison* (1803), 1 Cranch 137, 2 L. Ed. 60, the existence of the power in the courts has never been denied. Nor, since that decision, until of late, has the wisdom of so placing the power, been questioned as a necessary political principle in governments under written constitutions. The power had been exercised in prior cases, but had not before been authoritatively declared to exist. Thayer's *Cases on Constitutional Law*, vol. 1, pp. 48, 107; Marshall's *Complete Constitutional Decisions Annotated*, p. 39. In a Marshall commemorative address, delivered before the State bar association in 1901 (*Marshall Memorial*, vol. 1, pp. 345, 361), John F. Dillon, the distinguished jurist and author, said of it: "The case also decided for the first time in the Supreme Court of the United States that an act of Congress repugnant to the Constitution is void—observe, not voidable, but *void*—and that it is not only within the power, but it is also the duty, of the judicial department so to decide in any case properly before it involving the question. It is this point affirming the power and duty of the court to adjudge the laws in conflict with the Constitution to be void that gives to

that opinion, which has become the cornerstone of the constitutional law of this country, its vital and transcendent importance." Prof. Parsons, in commenting on the case, said in an address found in *Am. Law Review* 1865, p. 432 (*Marshall's Com. Const. Dec.* p. 37): "I should not do justice to my own deliberate belief did I not say that I think this decision is not surpassed in the ability it displays, nor equaled in its utility, by any case in the multitudinous records of English or American jurisprudence." Chancellor Kent's approval of the decision is as follows: "This great question may be regarded as now finally settled, and I consider it to be one of the most interesting points in favor of constitutional liberty and of the security of property in this country that has ever been judicially determined. In *Marbury against Madison* this subject was brought under the consideration of the Supreme Court of the United States and received a clear and elaborate discussion. The power and duty of the judiciary to disregard an unconstitutional act of Congress, or of any State legislature, were declared in an argument approaching to the precision and certainty of a mathematical demonstration." 1 Kent's *Comm.* pp. 453, 454. And the following are the words of that great American lawyer, Rufus Choate: "I do not know that I can point to one achievement in American statesmanship which can take rank for its consequences of good above that single decision of the Supreme Court which adjudged that an act of the legislature contrary to the Constitution is void, and that the judicial department is clothed with the power to ascertain the repugnance and pronounce the legal conclusion. That the framers of the Constitution intended this to be so is certain; but to have asserted it against Congress and the Executive, to have vindicated it by that easy yet adamant demonstration than which the reasonings of mathematics show nothing surer, to have inscribed this vast truth of conservatism upon the public mind, so that no demagogue not in the last stages of intoxication denies it—this is an achievement of statesmanship (of the judiciary) of which a thousand years may not exhaust or reveal all the good." *Marshall's Com. Const. Dec.* p. 38; *Marshall Memorial*, vol. 1, p. 362.

In discussing this power of the courts, in exercising the judicial function of government, to declare legislative enactments void when that body has, in such enactment, gone beyond or outside of the power granted to it, Prof. Lieber uses the following language in his work on *Civil Liberty and Self-Government*, at page 162: "The supremacy of the law requires that where enacted consti-

tutions form the fundamental law, there be some authority which can pronounce whether the legislature itself has or has not transgressed it in the passing of some law, or whether a specific law conflicts with the superior law, the constitution. If a separate body of men were established to pronounce upon the constitutionality of a law, nothing would be gained. It would be as much the creature of the Constitution as the legislature, and might err as much as the latter. *Quis custodiet custodes?* Tribunes or ephori? They are as apt to transgress their powers as other mortals. But there exists a body of men in all well-organized polities, who, in the regular course of business assigned to them, must decide upon clashing interests, and do so exclusively by the force of reason, according to law, without the power of armies, the weight of patronage or imposing pomp, and who, moreover, do not decide upon principles in the abstract, but upon practical cases which involve them—the middlemen between the pure philosophers and the pure men of government. These are the judges—courts of law. When laws conflict in actual cases, they must decide which is the superior law and which must yield; and as we have seen that, according to our principles every officer remains answerable for what he officially does, a citizen, believing that the law he enforces is incompatible with the superior law, the Constitution, simply sues the officer before the proper court as having unlawfully aggrieved him in the particular case. The court, bound to do justice to every one, is bound also to decide this case as a simple case of conflicting laws. The court does not decide directly upon the doings of the legislature. It simply decides, for the case in hand, whether there actually are conflicting laws, and, if so, which is the higher law that demands obedience when both may not be obeyed at the same time. As, however, this decision becomes the leading decision for all future cases of the same import, until, indeed, proper and legitimate authority shall reverse it, the question of constitutionality is virtually decided, and it is decided in a natural, easy, legitimate, and safe manner, according to the principle of the supremacy of the law and the independence of justice. It is one of the most interesting and important evolutions of the government of law, and one of the greatest protections of the citizen. It may well be called a very jewel of Anglican liberty, one of the best fruits of our political civilization.”

And Judge Cooley in his *Constitutional Limitations* thus treats the same question: “So, also, there are cases where, after the two houses of the legislature have passed upon the question, their

decision is in a certain sense subject to review by the Governor. If a bill is introduced the constitutionality of which is disputed, the passage of the bill by the two houses must be regarded as the expression of their judgment that, if approved, it will be a valid law. But if the Constitution confers upon the Governor a veto power, the same question of constitutional authority will be brought by the bill before him, since it is manifestly his duty to withhold approval from any bill which, in his opinion, the legislature ought not for any reason to pass. And what reason so forcible as that the Constitution confers upon them no authority to enact it? In all these and the like cases, each department must act upon its own judgment, and cannot be required to do that which it regards as a violation of the Constitution, on the ground solely that another department which, in the course of the discharge of its own duty, was called upon first to act, has reached the conclusion that it will not be violated by the proposed action. But setting aside now those cases to which we have referred, where from the nature of things, and perhaps from explicit terms of the Constitution, the judgment of the department or officer acting must be final, we shall find the general rule to be, that whenever action is taken which may become the subject of a suit or proceeding in court, any question of constitutional power or right that was involved in such action, will be open for consideration in such suit or proceeding, and that as the courts must finally settle the particular controversy, so also will they finally determine the question of constitutional law. For the Constitution of the State is higher in authority than any law, direction, or order made by any body or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made. In any case of conflict the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity. But no mode has yet been devised by which these questions of conflict are to be discussed and settled as abstract questions, and their determination is necessary or practical only when public or private rights would be affected thereby. They then become the subject of legal controversy; and legal controversies must be settled by the courts. The courts have thus devolved upon them the duty to pass upon the constitutional validity, sometimes of legislative, and sometimes of executive acts. And as judicial tribunals have authority, not only to judge, but also to enforce their judgments, the result of a decision against the constitutionality of a



legislative or executive act, will be to render it invalid through the enforcement of the paramount law in the controversy which has raised the question. The same conclusion is reached by stating in consecutive order a few familiar maxims of the law. The administration of public justice is referred to the courts. To perform this duty, the first requisite is to ascertain the facts, and the next to determine the law applicable to such facts. The constitution is the fundamental law of the State, in opposition to which any other law, or any direction or order, must be inoperative and void. If, therefore, such other law, direction, or order seems to be applicable to the facts, but on comparison with the fundamental law the latter is found to be in conflict with it, the court, in declaring what the law of the case is, must necessarily determine its validity, and thereby in effect annul it. The right and the power of the courts to do this are so plain, and the duty is so generally—we may almost say universally—conceded, that we should not be justified in wearying the patience of the reader in quoting from the very numerous authorities upon the subject.” Cooley, *Const. Lim.* (7th ed.) 76-78.

The power to determine and declare the law covers the whole body of the law, fundamental and ordinary, the latter being those laws which apply to particulars and are tentative, occasional and in the nature of temporary expedients. Whether legislative action is void for want of power in that body, or because the constitutional forms or conditions have not been followed or have been violated, may become a judicial question, and upon the courts the inevitable duty to determine it falls. And so the power resides in the courts, and they have, with practical uniformity, exercised the authority to determine the validity of proposal, submission or ratification of change in the organic law. Such is the rule in this State. \* \* \*

In all of the cases just cited the courts assumed jurisdiction, and determined questions relating to the initiation and adoption of proposed organic change. In many of them the power of the courts over the question was vigorously denied by counsel, but in every instance it was held that the question was a judicial one, and for the courts' determination when presented concretely by a case brought before it involving it. Nor is the general rule impaired or weakened by exceptions such as the case of *Worman v. Hagan* (1893), 78 Md. 152, 27 Atl. 616, 21 L. R. A. 716, where it was held that as a special tribunal for determining whether amendments had carried, had been created by the Constitution itself,



which was therefore conclusive; or the case of *Miller v. Johnson* (1892), 92 Ky. 589, 18 S. W. 522, 15 L. R. A. 525, where, after an irregularly formed and promulgated Constitution had been recognized by the people, the executive and the legislative departments, and great interests had arisen under it, and important rights existed by virtue of it, the courts refused to pass upon questions raised as to its validity as the organic law of the State; or the celebrated case of *Luther v. Borden* (1849), 7 How. 1, 12 L. Ed. 581, which involved the episode in the history of our country known as "Dorr's Rebellion."

In the late and well-considered case of *McConaughy v. Secretary of State*, *supra*, which was a proceeding to contest an election on proposed constitutional amendments, it was contended that the adoption of organic law was political action and beyond the jurisdiction of the courts. In the opinion of the court, by Elliott, J., it was said: "An examination of the decisions shows that the courts have almost uniformly exercised the authority to determine the validity of the proposal, submission, or ratification of constitutional amendments." And after reviewing many of the cases, and stating the principles upon which written constitutions with us are based, and defining the discretionary or political powers given into the hands of the departments, it was said, in affirming the power of the courts over the question stated: "Thus the legislature may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because they involve political questions, but because they are matters which the people have by the Constitution delegated to the legislature. The Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred. His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. But every officer under a constitutional government must act according to law and subject to its restrictions, and every departure therefrom or disregard thereof must subject him to the restraining and controlling power of the people, acting through the agency of the judiciary; for it must be remembered that the people act through the courts, as well as through the executive or the legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determin-

ing the limitations which the law places upon all official action. The recognition of this principle, unknown except in Great Britain and America, is necessary, to 'the end that the government may be one of laws and not of men'—words which Webster said were the greatest contained in any written constitutional document."

The jurisdiction of the courts was questioned on the same ground in the late case of *McBee v. Brady*, *supra*, which was a mandamus proceeding against the Governor to compel him to call an election pursuant to amendments claimed to have been adopted, and the supreme court of Idaho said, on pages 775 and 777 of 15 Idaho, on page 102 of 100 Pac.: "The Constitution is the fundamental law of the State. It received its force from the express will of the people, and in expressing that will the people have incorporated therein the method and manner by which the same can be amended and changed, and when the electors of the State have incorporated into the fundamental law the particular manner in which the same may be altered or changed, then any course which disregards that express will is a direct violation of that fundamental law. These provisions having been incorporated in the Constitution, where the validity of a constitutional amendment depends upon whether such provisions have been complied with, such question presents for consideration and determination a judicial question, and the courts of the State are the only tribunals vested with power under the Constitution to determine such questions. \* \* \* Whether the constitutional method has been pursued is purely a judicial question, and no authority is vested in any officer, department of state, body politic, or tribunal, other than the courts, to consider and determine that matter."

In the well-considered case of *Rice v. Palmer*, *supra*, after a consideration of the question, the court in its opinion concluded thus on page 446 of 78 Ark., on page 400 of 96 S. W.: "There can be little doubt that the consensus of judicial opinion is that it is the absolute duty of the judiciary to determine whether the Constitution has been amended in the exact and precise manner required by the Constitution, unless perchance a special tribunal has been erected to determine this question; and even then many of the authorities hold that this tribunal cannot be permitted to illegally amend the organic law. Therefore, it is the duty of the court to decide the question on its merits."

In the opinion of the supreme court of Mississippi, in the case of *State v. Powell*, *supra*, the question, after full consideration, was disposed of as follows: "The true view is that the Constitution,

the organic law of the land, is paramount and supreme over Governor, legislature and courts. When it prescribes the exact method in which an amendment shall be submitted, and defines positively the majority necessary to its adoption, these are constitutional directions mandatory upon all departments of the government, and without strict compliance with which no amendment can be validly adopted. Whether an amendment has been validly submitted or validly adopted depends upon the fact of compliance or noncompliance with the constitutional directions as to how such amendments shall be submitted and adopted, and whether such compliance has, in fact, been had, must, in the nature of the case, be a judicial question."

In the case of *Bott v. Wurts*, *supra*, which was a proceeding by writ of *certiorari* at the instance of taxpayers, to review the statement of the State board of canvassers of the result of an election on amendments, it was claimed that the concurrence of the board of State canvassers and the executive department of the government, in their respective official functions, placed the subject-matter beyond the cognizance of the judicial department of the government. The board of canvassers was composed of the Governor and four or more members of the Senate whom it was provided he should call to sit with him and canvass the vote and declare the result. And of this board it was said by the court, speaking through Dixon, J.: "It should be observed that neither the board of canvassers nor the Governor was exercising a function devolved upon them by the Constitution; each derived authority wholly from the statute. The powers conferred upon them might as well, if the legislature had so willed, have been cast upon any other body." And of its right to take jurisdiction it was said: "In New Jersey the judicial authority was thus declared by Chief Justice Beasley, in *State, Werts v. Rogers*, 56 N. J. Law, 480, 616 [28 Atl. 726, 758, 29 Atl. 173], 23 L. R. A. 354, and on this point he was delivering the opinion of every justice of the Supreme Court: 'When the inquiry is whether the legislature or any other body or officer has violated the regulations of the Constitution, it is entirely plain that the decision of that subject must rest exclusively with the judicial department of the government.' \* \* \* For the exercise of that authority with regard to an attempted amendment of the Constitution, in conformity with the express provisions of that instrument, no occasion has heretofore arisen in this State; but we perceive no good reason for excluding such a case from the gen-

eral principle. If a legislative enactment, which may be repealed in a year, or an executive act, which affects only a single individual, cannot be allowed to stand if it contravenes the Constitution, *a fortiori* a change in the fundamental law, which is much more permanent and affects the whole community, should not be permitted to take place in violation of constitutional mandates."

The supreme court of Alabama, in *Collier v. Frierson*, *supra*, made this declaration on the subject: "We entertain no doubt, that, to change the Constitution in any other mode than by a convention, every requisition which is demanded by the instrument itself must be observed, and the omission of any one is fatal to the amendment. We scarcely deem any argument necessary to enforce this proposition. The Constitution is the supreme and paramount law. \* \* \* The mode by which amendments are to be made under it is clearly defined. It has been said, that certain acts are to be done, certain requisitions are to be observed, before a change can be effected. But to what purpose are these acts required, or these requisitions enjoined, if the legislature or any other department of the government, can dispense with them? To do so, would be to violate the instrument which they are sworn to support, and every principle of public law and sound constitutional policy requires the courts to pronounce against every amendment, which is shown not to have been made in accordance with the rules prescribed by the fundamental law."

In the case of *Koehler v. Hill*, *supra*, Day, C. J., speaking for the court, said: "The authority opposed to the view advanced by appellant's counsel is most satisfactory and conclusive, and, so far as we have been able to discover, is without conflict. Not only must a Constitution be amended in the manner prescribed in the existing Constitution, but it is competent for the courts, when the amendment does not relate to their own powers or functions, to inquire whether, in the adoption of the amendment, the provisions of the existing Constitution have been observed." And again: "While it is not competent for courts to inquire into the validity of the Constitution and form of government under which they themselves exist, and from which they derive their powers, yet, when the existing Constitution prescribes a method for its own amendment, an amendment thereto, to be valid, must be adopted in strict conformity to that method; and it is the duty of courts, in a proper case, when an amendment does not relate to their own powers or functions, to inquire whether, in the adop-



tion of the amendment, the provisions of the existing Constitution have been observed, and, if not, to declare the amendment invalid and of no effect."

It is said in 6 Am. & Eng. Ency. of Law (2d Ed.) p. 908: "The courts have full power to declare that an amendment to the Constitution has not been properly adopted, even though it has been so declared by the political departments of the State." And to this conclusion the whole stream of authority harmoniously runs.

Counsel do not expressly deny the existence of this power in the courts of this State to declare the law, but their position is that the provisions of our Constitution, which divide the governmental elements, the legislative, the executive and the judicial, and bestow them on three separate agencies, being accompanied by the declaration that "no person charged with official duty under one of these departments shall exercise any of the functions of another except in this Constitution expressly provided," the latter is a limitation of the judicial power when it is sought to coerce or restrain the performance of legislative or executive acts. And this, it is claimed, is sought to be done in this case, and upon that ground the jurisdiction of the court is challenged. This position of counsel, in so far as it relates to executive acts, grows out of the fact that Section 16 of the general election law, being Section 6897, Burns 1908, provides that "the Governor of the State, and two qualified electors by him appointed, \* \* \* shall constitute a State board of election commissioners"; and the further fact that the act of 1911, known as Chapter 118, requires the performance by this board of certain purely ministerial duties relating to the submission of the so-called "new Constitution"; and the further fact that this action is to enjoin the performance of these duties by the board. And the contention of counsel is, that the presence of the Governor on this ministerial board is an absolute bar to the power of the judicial department to enjoin the board in the performance of the ministerial duties placed upon it by the act.

There is entire harmony in the decisions of courts and the writings of commentators in affirming the rule to be that the acts of the Governor of a State can in no case be controlled by the courts, directed or coerced by mandamus, or restrained by injunction, in duties strictly and exclusively political and executive, and requiring, therefore, judgment and discretion. The principle, that each department of the government is independent when acting within the sphere of its powers and answerable only



to the people, is thus made secure. But there is an irreconcilable conflict of authority upon the question of the judicial control of the official acts of the Governors of the various States, in regard to those duties imposed upon them by law, which are purely ministerial in their nature, and which do not necessarily pertain to the functions of the gubernatorial office, and which might have been imposed upon any other State officer. The cases are collected in an elaborate note to the case of *State ex rel. v. Brooks*, Governor, (1906), 14 Wyo. 393, 84 Pac. 488, as reported in 6 L. R. A. (N. S.) 750, 7 Ann. Cas. 1108. An examination of the reported cases holding that the courts cannot control the ministerial acts of the Governor, discloses that a number of them do not involve the question, but merely the attempt to control acts, in the doing of which the Governor had a discretion. Such a case indeed is that of *People v. Governor* (1874), 29 Mich. 320, 18 Am. Rep. 89, an opinion of Cooley, J., much followed by later decisions, where it was said: "If we concede that cases may be pointed out in which it is manifest that the Governor is left no discretion the present is certainly not among them, for here, by the law, he is required to judge, on a personal inspection of the work, and must give his certificate on his own judgment, and not on that of any other person, officer or department."

And it would seem that by an elimination of such cases the weight of authority, both in number of decided cases and sound reason, was favorable to the power of the courts. The decisions of this court have not positively and clearly settled the question. In *Governor v. Nelson* (1855), 6 Ind. 496, a mandamus was awarded against the Governor to compel him to issue a commission to Nelson as clerk of the circuit court. The case of *Biddle v. Willard*, Governor (1857), 10 Ind. 62, was an application for a mandamus to require the Governor to issue a commission to Biddle as judge of this court, and the writ was refused on the ground that at the time Biddle claimed to have been elected there was no vacancy in the office. In *Baker*, *Governor v. Kirk* (1870), 33 Ind. 517, the circuit court awarded the writ to require the Governor to issue a commission to Kirk as a director of the State prison, and this court sustained the action. It may be said that in neither of these cases was the power of the court over the Governor in the matter of issuing commissions to officers, raised or questioned.

The later case of *Gray*, *Governor v. State, ex rel.* (1880), 72 Ind. 567, involved the following facts: The General Assembly had authorized the Governor, Attorney General, Secretary of

State and Treasurer of State, or a majority of them, to redeem certain old outstanding improvement bonds. The action was for a writ of mandamus to compel them to do so. In this court the question of the court's power to take jurisdiction was raised and disposed of by the opinion of the court written by Worden, J., in the following words: "But the question whether a mandate will lie against the Governor to enforce the performance of an executive duty does not arise in this case. The duty of the Governor, in connection with the other officers named in the act, is not executive. The executive power of the State is vested solely in the Governor. Constitution, Article 5, Section 1. Any power or authority vested by legislation in the Governor, together with other officers or persons, in which they are to have an equal voice with him, cannot be executive, as he alone is vested with the executive power of the State. Any duty which he is by law required to perform, in connection with others, in which they have an equal voice with him, can in no sense be said to be an executive duty. The Governor and the other officers named in the act may well be regarded as constituting a board, organized by the legislature for the performance of certain duties; and a mandate will lie against them to enforce the performance of the duties prescribed. The duties to be performed under the act, save, perhaps, determining the genuineness of the bonds and coupons presented for redemption, were purely ministerial. A ministerial act is defined to be 'one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done.' *Flournoy v. City of Jeffersonville* (1861), 17 Ind. 169, 174 (79 Am. Dec. 468)."

In the case of *Hovey, Governor v. State ex rel. Shuck* (1891), 127 Ind. 588, 27 N. E. 175, 11 L. R. A. 763, 22 Am. St. Rep. 663, the relator was awarded mandamus to compel the Governor to issue to him a commission as auditor of Jennings county. The Governor appealed, and denied the power of the courts to control his action in the matter. In the opinion of the court written by Coffey, J., the authorities were partly reviewed, and the sharp conflict stated. *Gray v. State ex rel.*, *supra*, was considered, and it was said of it: "It is unnecessary that we should express our approval or disapproval of this case, as it must be apparent to every one, upon a moment's reflection, that the case before us is distinguished from this case and rests upon entirely different principles." And the conclusion was stated thus: "We think the Governor's

decision in this matter must be taken as final. The case is not one where the Governor is acting as the member of a board created by legislative enactment, in a matter wholly disconnected with his functions as Governor of the State; but it is a case where he is required to act as Governor." It may be noted that Section 6 of Article 15 of the Constitution provides that "all commissions shall issue in the name of the State, and be signed by the Governor." Thus we see that the duty of the Governor to issue commissions is a duty placed upon that officer by the Constitution, and the General Assembly may not place it elsewhere. On the other hand, the State board of election commissioners is purely a creature of the legislature; the personnel of its membership and the character of the duties placed upon it and manner of their exercise, are entirely under the control of that body. No provision of the Constitution and no compelling reason bound the legislature to make the Governor a member of the board. It might with equal right and perhaps with greater propriety, have made the board consist of the Secretary of State and two qualified electors, or any other subordinate State officer, or three qualified electors to be appointed by the Governor, rather than to place upon the chief magistrate the subaltern ministerial duty of supervising the preparation of and distributing the State ballots. Had this been done, and the board so constituted, then it could not be doubted that the board's acts would be subject to the supervisory jurisdiction of the courts, for there is no considerable authority, if any, for claiming immunity from judicial cognizance in the performance of a ministerial duty, for any officer other than the executive head of the State. The Governor is one of the three members of the board. As such member he has identically, under the law, the same duties as each of the other two, with just such power and authority in the transaction of the duties directed as one of the others, and no more. The two members may out-vote him, control the action of the board, and proceed unlawfully; and that action may infringe the rights of citizens. Must it be said, then, in such case, that the board is above the law and beyond the reach of the power of the courts to declare the law and protest rights? No principle of law or sound reason permits an answer in the affirmative. To say that the presence of the Governor on a board as a member is a bar to the jurisdiction of the courts, while without him the board, with identically the same duties, is subject to judicial cognizance, is to say that rights may be secure and enforceable in the latter case, and without remedy in the former. This is contrary to sound legal

principles. Our statutes contain many instances of the association of the Governor with administrative officers and citizens on boards for the performance of various governmental duties. A list of many of these, nearly twenty in number, is given in *French v. State, ex rel.* (1895), 141 Ind. 618, at page 637, 41 N. E. 2, 29 L. R. A. 113.

The courts of this State took jurisdiction and determined on its merits, a suit against one of these boards, the State board of education, to enjoin it and the individual members from letting a contract. *Silver, Burdett & Co. v. Indiana State Board, etc.* (1905), 35 Ind. App. 438, 72 N. E. 829. The possible evil effects of holding these boards to be outside of the pale of the jurisdiction of the courts are so obvious that such a rule cannot be sanctioned. In the great majority of cases in which a Governor's immunity from judicial control has been considered and passed upon, the action was for mandamus to compel action, and not injunction to restrain; and counsel for appellants contend that the remedies are not correlative, and, if conceded that mandamus would lie against the board, still it is claimed, injunction will not. An unconstitutional law gives no power and imposes no duty. If the board had refused to perform the duties in relation to the submission which the act of 1911 seeks to place upon it, on the belief that the act was invalid, mandamus would have been available to compel its action. The remedy of injunction, on the other hand, may be resorted to, in order to restrain them from acting. Eminent authority is against counsels' contention. In *Pomeroy's Equity Jurisprudence*, vol. 5, p. 583, Section 328, it is said: "An injunction will not issue against an executive officer of the government, nor against one acting under him, to restrain the performance or execution of administrative acts and orders within the scope of his authority. This is based upon the principle which governs also the legal remedy of mandamus. It would be contrary to our theory of government for the judicial department to interfere with the reasonable discretion of the executive. Hence, courts of law and of equity refuse the remedies of mandamus and injunction when they will have the effect of controlling a reasonable discretion. Where no question of discretion is involved, both law and equity will interfere without hesitation. It is generally stated that mandamus may issue in a proper case to compel the performance of a ministerial act. The corresponding statement as to injunction is that it may issue in a proper case to restrain an act in excess of the officer's authority."



In *Noble v. Union River Logging Ry.* (1893), 147 U. S. 172, 13 Sup. Ct. 273, 37 L. Ed. 123, it was said: "If he (Secretary of State) has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do." In *Board of Liquidation v. McComb* (1875), 92 U. S. 531, 23 L. Ed. 623, the court, in discussing the power of courts to enjoin State officials, said: "But it has been well settled, that, when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have mandamus to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases, the writs of mandamus and injunction are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the nonperformance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void. *Osborn v. Bank of United States* (1824), 9 Wheat. 859 [6 L. Ed. 204]; *Davis v. Gray* (1872), 16 Wall. 220 [21 L. Ed. 447]."

In *State ex rel. Atty. Gen. v. Cunningham* (1892), 81 Wis. 504, 51 N. W. 736, 15 L. R. A. 561, the Supreme Court of that State uses the following language: "Inasmuch as the use of the writ of injunction in the exercise of the original jurisdiction of this court is correlative with the writ of mandamus, the former issuing to restrain where the latter compels action, it is plain that this case, as against the respondent, is a proper one for an injunction to restrain unauthorized action by him in a matter where his duties are clearly ministerial and affect the sovereignty, rights, and franchises of the State, and the liberties of the people."

And in *State ex rel. Lamb v. Cunningham* (1892), 83 Wis. at page 127, 53 N. W. at page 50, 17 L. R. A. 145, 35 Am. St. Rep. 27, the court quotes from Chief Justice Ryan in a former case: "And it is very safe to assume that the constitution gives injunction to restrain excess in the same class of cases as it gives mandamus to supply defect; the use of the one writ or the other in each case turning solely on the accident of overaction or shortcoming of the defendant. And it may be that where defect and excess meet in a single case, the court might meet both, in its discretion, by



one of the writs, without being driven to send out both, tied together with red tape, for a single purpose."

The case of *Mott v. Pennsylvania R. Co.* (1858), 30 Pa. 9, 72 Am. Dec. 664, was a suit for injunction against the railroad company and the Governor and the Treasurer of the State, brought by the canal commissioners of the State as officials and as individual taxpayers, to restrain the sale of property of the State under the provisions of an unconstitutional law. In sustaining injunction as a proper remedy, the opinion of the court, delivered by Lewis, C. J., said: "It is objected that the Governor is not subject to this form of our jurisdiction. It is far from our intention to claim the power to control him in any matter resting in executive discretion. But the rule of law seems to be, that when the legislature proceeds to impose on an officer duties which are purely ministerial, he may be coerced by mandamus or restrained by injunction, as the rights of the parties interested may require. In such a case no individual in the land, however high in power, can claim to be above the law. \* \* \* And if it be shown that the act under which he claims authority to dispose of the public property or to divest private rights, is unconstitutional and void, he may of course, like any other individual, be restrained from proceeding."

The case of *Lynn v. Polk* (1881), 8 Lea (Tenn.), 121, on page 152, was an action to enjoin the acts of a State funding board under a law claimed to be unconstitutional and so held. The board was composed of the Secretary, Comptroller, and Treasurer of the State. It was contended that the action would not lie, and that the court was without jurisdiction for the reason that the law of the State provided that no court in the State had jurisdiction to entertain any suit against the State or any officer of the State. In disposing of this contention the court said: "The men who shall for the time being fill these offices are designated, as the constituent elements, making up the unit created by the act, designated a funding board. This unit, so constituted, acts as one, any two of them constituting a quorum for the transaction of the business in hand. I cannot see how this legal thing thus created can be conceived of as an officer of the State. It certainly is not the Comptroller, nor Treasurer, nor Secretary of the State, for it is inconceivable that the three men filling these offices should be combined into one, and be either officer. The acts of the board are no more the acts of these officers as such, than would be the case if one justice of the peace, one constable, and the sheriff of Davidson county had constituted the board, would have made the act of the

board the official act of either of these officers." And it was, moreover, held that an officer of the State, executing an unconstitutional law, is not acting by authority of the State, and, therefore, that taxpayers, citizens of the State, could maintain a bill *quia timet* to restrain executive officers from proceeding under such unconstitutional and void law.

In *Pennoyer v. McConaughy* (1891), 140 U. S. 1, 11 Sup. Ct. 699, 35 L. Ed. 363, injunction was granted against a board of land commissioners, of which the Governor, Secretary of State, and Treasurer of State were members, and it was said by Lamar, J.: "It must be borne in mind that this suit is not nominally against the Governor, Secretary of State, and Treasurer, as such officers, but against them collectively, as the board of land commissioners. It must also be observed that the plaintiff is not seeking any affirmative relief against the State or any of its officers. \* \* \* All that he asks is, that the defendants may be restrained and enjoined from doing certain acts which he alleges are violative of his contract made with the State when he purchased his lands. He merely asks that an injunction may issue against them to restrain them from acting under a statute of the State alleged to be unconstitutional, which acts will be destructive of his rights and privileges, and will work irreparable damage and mischief to his property rights. The case cannot be distinguished, in principle, from *Osborn v. Bank of the United States*, *Davis v. Gray*, *Board of Liquidation v. McComb*, and *Allen v. Baltimore & Ohio Railroad Co.*"

It is a part of appellants' contention that, as the general rule is that courts will not issue writs that are unavailing, injunction should not be decreed in this. For it is assumed by counsel that the Governor, being invested by the Constitution with supreme executive authority, with control over the military forces of the State, the courts could not enforce the decree against the board of which the law makes him a member if he chose to disregard it. This consideration presents no reason for the court to refuse to exercise jurisdiction. It surely does not follow that compulsory action would be needed in aid of the writ. This is a government of law, and all are amenable to it. To the courts the people have given the power, and charged them with the duty to declare what it is; and this duty cannot be lightly disregarded however unpleasant and embarrassing it may be. Without the aid of sword or purse, courts have met with little difficulty from disobedience of their decrees, and this has come equally from a generally con-

scientious discharge of duty by the courts and a respect for the law which is inherent in our people. Where the question presented to a court is a judicial question, it would be sheer, inexcusable cowardice and a violation of duty for it to decline the exercise of its jurisdiction because of a lack of power to enforce its decree if other agencies of government should refuse to comply with it. Moreover, we have no right to reflect on any officer of a co-ordinate department, by entertaining the assumption that the law, as declared by the courts, might be disregarded.

The further contention of counsel, that the court is without jurisdiction for the reason that courts may not interfere with legislative action, has for its basis the claim that, using the words of counsel, the writ of injunction in this case, if it does anything, restrains the enactment of a law which is upon its passage, and which may not of course be done. Much of the argument of counsel is based upon the assumption, that in doing the thing sought to be done through Chapter 118 the General Assembly was acting within its power, and it falls to the ground with the determination to the contrary. Since the act incorporating the proposed organic law was passed in the form of and in accordance with the prescribed rules of ordinary enactments; and since it provided rules of conduct for the action of certain officials, it must be subject to interpretation and construction of the courts. The work of the legislature in relation to it is at an end; it has passed beyond any further action of that body; so far as the legislature is concerned, it is a complete enactment. If the legislature was without power to formulate and present the proposed organic law to the people, as we have seen it was, Chapter 118 is void, and the mandate of that body, that the ballot shall be encumbered with the question of its adoption, is of no more force than that of any citizen without authority under the Constitution. The question involved is no more than whether ministerial acts threatened to be done in carrying out the provisions of an unconstitutional act may be enjoined. This, as we have seen, may be done. And there is also authority for the intervention of the courts before proposed constitutional changes have been passed upon by the votes of the electors and the result declared.

In the last case of *Carton v. Secretary of State*, 151 Mich. 337, 115 N. W. 429, it appears that the State of Michigan held a constitutional convention in 1907 and 1908. The act which called it provided that the result of its labors should be submitted to the people at the April election in 1908. The convention itself pro-

vided that it should be submitted at the November election of that year. The Secretary of State declined to obey the mandate of the convention, believing that that body was without power to direct and fix the time of submission. The president of the convention brought an action for a writ of mandamus to compel him to comply with the directions of the convention. The writ was awarded by the Supreme Court on the ground that under the Constitution the authority to fix the time and manner of submission rested in the convention, and that the legislature was without power in the matter.

Another case is that of *Wells v. Bain*, 75 Pa. 39, 15 Am. Rep. 563. Citizens and voters of the State sued to enjoin commissioners of election, under an ordinance of the convention, to revise the Constitution, and other election officers from expending any money in relation to the election, and from holding such election, on the ground that the ordinance of the convention providing for the manner of holding the election on the proposed Constitution was void. What was said by Agnew, C. J., on the question of jurisdiction, is applicable to the question under consideration: "The question of jurisdiction has been reserved for the conclusion. The first remark to be made is, that all the departments of government are yet in full life and vigor, not being displaced by any authorized act of the people. As a court we are still bound to administer justice as heretofore. If the acts complained of in these bills are invasions of rights without authority, we must exercise our lawful jurisdiction to restrain them. One of our equity powers is the prevention or restraint of the commission or continuance of acts contrary to law, and prejudicial to the interests of the community or the rights of individuals. *Page v. Allen*, 58 Pa. 338, 98 Am. Dec. 272, and the authorities cited by counsel, are precedents sufficient to justify the exercise in this case. Here the court is asked to restrain a body of men attempting to proceed contrary to law—to set aside the lawful election system of the city, and substitute an unlawful system in its place. Their acts are not only contrary to law, but are prejudicial to the interests of the community, by endangering the rights of all the electors, through means of an illegal election held by unauthorized officers. In *Patterson v. Barlow*, 60 Pa. 54, the aid of the court was asked not to prevent acts contrary to law, but to strike down the only lawful system of election in the city, and thereby to disfranchise all its citizens, for all other election laws had been actually repealed. We said then it was more than doubtful how far private citizens



can call for an injunction beyond their own invaded rights, or ask to restrain a great system of law in its public aspects. In this case we are called upon not to strike down, but to protect a lawful system, and to prevent intrusion by unlawful authority. If this ordinance is invalid, as we have seen it is as to the city elections, the taxes of the citizens will be diverted to unlawful uses, the electors will be endangered in the exercise of their lawful franchise, and an officer necessary to the lawful execution of the election law ousted by unlawful usurpation of his functions."

See, also, *Woods's Appeal*, 75 Pa. 59, which was also a suit for injunction growing out of the same ordinance. In *Warfield v. Vandiver*, 101 Md. 78, 60 Atl. 538, 4 Ann. Cas. 692, the court of appeals of Maryland sustained the circuit court in issuing a writ of mandamus to require the Governor to order publication of a proposed amendment to the constitution of that State. In *Commonwealth v. Griest*, 196 Pa. 396, 46 Atl. 505, 50 L. R. A. 568, the same action was taken for the same purpose against the Secretary of State.

The case of *Livermore v. Waite*, 102 Cal. 113, 36 Pac. 424, 25 L. R. A. 312, was a case in which at the suit of a citizen and taxpayer the Secretary of State of California was enjoined from certifying a proposed constitutional amendment to the clerks of the various counties, and from doing other acts toward the submission of it which would entail an expenditure of public money. The legislature had not strictly complied with the Constitution, and the Supreme Court sustained the injunction.

*Holmberg v. Jones*, 7 Idaho 752, 65 Pac. 563, was a case against the Auditor of State, for a mandamus to compel him to comply with an amendment claimed to have been adopted. The auditor defended on the ground that the amendment had not been legally adopted. The court said: "It cannot be questioned but that any voter of the State, by proper proceedings in the district court, or in this court, could have obtained a writ of prohibition restraining the Secretary of State from certifying the question of adopting said proposed amendment to the various county auditors. The official ballot could have been protected against the improper submission of such question, and could have been purged of the presence of such question thereon, by proper judicial proceeding."

In the case of *Tolbert v. Long*, 134 Ga. 292, 67 S. E. 826, 137 Am. St. Rep. 222, an act had been passed by the legislature creating a board of county commissioners for the county of Madi-



son, and providing that the same should not go into effect until ratified by the vote of the people of the county. A citizen and taxpayer sued to enjoin the holding of the election under the act. The jurisdiction of the court was questioned and the availability of the remedy of injunction. The court upheld both, saying: "If the legislative enactment proposed in the present case to become operative through the medium of a popular election be violative of the organic law of the land, it is the right of a taxpayer of the territory to be affected to say that the public funds shall not be used to defray the expenses of an illegal election. Besides, no adequate remedy at law occurs to us, to which the taxpayer might resort after the election had been duly declared in favor of the ratification of the enactment, wherein he could assert the unconstitutionality of the law. Certainly the remedy to enjoin the holding of the election would be more direct, and better calculated to avoid complications, than to remain passive until the law had been declared before beginning a proceeding to test its constitutionality. An instance is conceivable where a majority of the voters included within the limits of the territory to be affected might be decidedly of the opinion that the enactment was opposed to the Constitution, and for this reason abstain from voting. If they refrained from voting, the law must be adopted, if at all, by a minority vote; or, if those voters take part, they must do so with the consciousness of participating in an illegality and running the risk of estopping themselves from thereafter calling in question the constitutionality of the act under which the election was held."

The cases of *State v. Thorson*, 9 S. D. 149, 68 N. W. 202, 33 L. R. A. 582, *Threadgill v. Cross*, 26 Okl. 403, 109 Pac. 558, 138 Am. St. Rep. 964, and *People v. Mills*, 30 Colo. 262, 70 Pac. 322, state a different doctrine; but those states have different Constitutions.

The power to control by mandamus and injunction the ministerial acts of officers in relation to elections under unconstitutional statutes, has been declared by this court and courts of other states in apportionment cases. \* \* \*

Many of the decisions reviewed above establish the capacity of the appellee to sue in such a case as this, and with this view our own cases are in harmony. \* \* \*

The small proportionate sum of the cost of the election which would fall upon appellee as a taxpayer is not of itself sufficient to destroy his competency to sue. "Where a suit is brought by one or more, for themselves, and all others of a class, jointly interested,

for the relief of the whole class, the aggregate interest of the whole class constitutes the matter in dispute." *Brown v. Trousdale*, 138 U. S. 389, 11 Sup. Ct. 308, 34 L. Ed. 987.

The great importance of the case, involving as it does so vitally the organic law of the State and the relationship of all of the departments of government established by it, has compelled the most thorough, careful and solemn consideration of this court. To the reluctance of courts to declare an ordinary enactment of the legislative body void, because in conflict with the Constitution, has been added other restraining and embarrassing elements, in that, as stated, all three governmental departments are involved. In the determination of the difficult and delicate questions presented, we acknowledge the aid we have received from the industry and ability of the trial judge and the attorneys in the case.

We find, as indicated, that the act of March 4, 1911, known as Chapter 118, is in violation of the Constitution, and void, and the judgment of the lower court is affirmed.

DISSENTING OPINION OF JUDGE MORRIS (JULY 5, 1912).

In his dissenting opinion, Judge Morris held that the lower court was without jurisdiction and he declined to enter extensively into the tributary questions involved. This want of jurisdiction arose from the fact that the Governor cannot be enjoined from performing an official act; there is no distinction between the ministerial and executive acts of the Governor; he can perform no duty unless he perform it as Governor.

((178 Ind. 336, 415, 99 N.E. 1, 29))

I cannot concur in the majority opinion, and the importance, as well as the novelty, of the questions involved, constrain me to state the reasons for dissenting.

The General Assembly of 1911 passed an act to submit to the electors of the State, at the general election of 1912, for ratification or rejection, a proposed "new Constitution," set out in the body of the act. Acts 1911 p. 205. For the most part, the proposed "new Constitution" is a copy of the present one, the most prominent changes being in authorizing the legislature to enact a workman's compensation law; in changing the number and apportionment of representatives in the legislature; in authorizing the Supreme Court to consist of eleven instead of five members; in requiring certain qualifications for voters; and in authorizing the legislature, on petition of twenty-five per cent of the voters, to adopt laws providing for the initiative and referendum, and

for the recall of officers, other than judges. The act provides that the proposed Constitution shall go into effect January 1, 1913, if ratified by the voters.

By an act concerning elections, approved March 6, 1889 (Acts 1889, p. 157, Burns' Stat. 1908, Section 6882 *et seq.*), among other things, it is provided that the Governor and two electors of the State, by him appointed, shall constitute a State board of election commissioners, whose duty it shall be to prepare and distribute ballots at State elections. Section 62 of the act (Burns' Stat. 1908, Section 6944) requires the board "whenever any *constitutional amendment*, or *other question*, is required by law to be submitted to popular vote," to cause a brief statement of the same to be printed on the State ballots, and the words "Yes" and "No," under the same, so that the elector may indicate his approval or disapproval of the constitutional amendment, or other question submitted. Section 25 of the act (Burns' Stat. 1908, Section 6907) requires the Secretary of State, whenever such amendment or question is to be submitted to certify the same to the clerks of the circuit courts of the State, not less than thirty days before the election.

The complaint, among other things, alleges that the legislature of 1911 was without power to propose for submission to the electors the instrument in controversy; that the latter is not, in fact, a new Constitution, but is the present one with a series of amendments, and its submission to the electors in 1912 conflicts with our Constitution, which requires amendments thereto to be considered by two sessions of the legislature before submission to popular vote; that the proposed Constitution, in authorizing, under certain conditions, the legislature to adopt laws for the initiative and referendum, conflicts with the Federal Constitution, which guarantees to every State a republican form of government, and is also void, because of its provisions relating to the apportionment and representation in the legislature.

In his complaint, plaintiff further avers that "he himself, and all the electors and other citizens of the State *have the right to have it determined, decided, and adjudicated and published by the courts so as to know before the election \* \* \* whether the said act is a constitutional exercise of the legislative power of the General Assembly, and whether if adopted, said new Constitution would be valid or void.*" (Italics here, and throughout opinion, mine.)

The court states, in its special finding of facts, among other things, that plaintiff is a citizen, elector and taxpayer of Wash-

ington township, Marion county, and owns property assessed at \$24,840; that the assessed value of all the property in Indiana is \$1,843,341,000; that unless enjoined defendants will perform several acts, relating to this instrument, required of them by statute. It is further found that the expense of submission, "to be paid out of the treasury of the State and the several counties, \* \* \* will aggregate in all between \$1,000 and \$2,000."

The court stated its conclusions of law, in substance, as follows: The act of 1911, submitting the proposed new Constitution to the voters, is void because (1) of lack of power in the legislature to propose and submit the same; (2) because the instrument was proposed in violation of our present Constitution; (3) because the instrument is in violation of Articles 2, 4, and 5 of the ordinance adopted July 14, 1787, by the Congress of the Confederacy of the United States of America, and violation of Section 4 of the act of Congress of the United States of America, enabling the people of Indiana to form a State government, and violative of the ordinance of the people of the Territory of Indiana, adopted June 29, 1816, securing to the people of Indiana proportionate representation in the legislature; and (4) because the instrument is violative of the Virginia act, ceding to the United States the Northwest Territory, which provided that the states formed therefrom should be republican, when admitted as members of the Federal Union and violative of Article 5 of the ordinance of 1787, declaring that the states formed in such territory shall be republican in form, and violative of Section 4 of the act of Congress of April 16, 1816, enabling the people of Indiana Territory to form a State government, providing that the same, when formed, should be republican, and violative of Section 4 Article 4 of the Federal Constitution, which secures to each State a republican form of government. The fifth conclusion is that plaintiff is entitled to an injunction against Ellingham, Secretary of State, prohibiting him from certifying, before the election, to the several clerks, the proposed constitution; and the sixth is that Governor Marshall, and Bachelder and Roemler, constituting the board of election commissioners, should be enjoined from causing any statement of or concerning the proposed Constitution to be printed on any ballots to be used by the voters at the general election in November, 1912, *or any election to be held in Indiana*. Each defendant excepted to each conclusion of law. The defendants separately and severally moved in arrest of judgment, asserting, as grounds therefor, that the court had no jurisdiction of the sub-



ject-matter; that the court was without jurisdiction to enjoin the Governor of the State; that the court is without power to interfere with the executive department of the State in the discharge of its functions; that "the courts are not given a prerogative to guard the people against themselves in the matter of adopting organic law"; that a judgment pursuant to the conclusions of law would involve a usurpation of power by the judicial department; that the court has no power to determine political questions, or enjoin legislative action. The Governor separately filed a like motion.

Appellants insist here, among other things, that the court erred in each of its conclusions of law, and was without jurisdiction over the subject-matter of the action.

The question of jurisdiction is never a technical one, and where it appears that the lower court was devoid of power to determine the matters in issue, it is not only unnecessary, but improper, for this court to consider any other question presented. *Smith v. Myers*, 109 Ind. 1, 9 N. E. 692, 58 Am. Rep. 375, and cases cited; *State v. Thorson*, 9 S. D. 149, 68 N. W. 202, 33 L. R. A. 582.

Appellants contend that, as to the Governor, the court was without jurisdiction, because it has no power to restrain the head of the executive department of the government. Jurisdiction is the power to hear and determine a matter in controversy, and to carry into effect the judgment rendered. \* \* \*

In 1 Blackstone, Com., on page 242, it is said: "All jurisdiction implies superiority of power; authority to try would be vain and idle, without an authority to redress; and the sentence of a court would be contemptible unless that court had power to command the execution of it."

Equity acts primarily *in personam*. An injunction decree can only be enforced against one refusing to obey it, by contempt proceedings. 16 Cyc. 499. It is insisted by appellants that circuit courts may not imprison the Governor of the State for disobedience of an order relative to his official acts, and consequently there is no power to make the order.

Cases where injunctive relief have been sought against a Governor are rare, but the courts have frequently been called upon to issue writs of mandate against chief executives in cases where it was claimed no executive discretion was involved. On this subject there is a conflict of authority, both in the adjudicated cases, and in text-book authorities. *Hovey v. State ex rel.*, 127 Ind. 588, 592, 27 N. E. 175, 11 L. R. A. 763, 22 Am. St. Rep. 663. In *Cooley's Const. Lim.* (7th Ed.) on page 162, it is said: "It may



be proper to say here, that the executive, in the proper discharge of his duties under the Constitution, is as independent of the courts as he is of the legislature." In *Gray, Governor, v. State ex rel.* (1880), 72 Ind. 567, it was held by this court that an action for mandamus would lie against the Governor and certain State officers, to compel the redemption of certain State bonds. This decision was on the ground that the duty enjoined on the Governor was in no way executive but was purely ministerial.

In *Hovey v. State ex rel.*, *supra*, (1891), the *Gray Case* was distinguished, and while it was not expressly overruled, it evidently would have been had such action been deemed necessary, as will appear from the authorities reviewed in the opinion and the court's conclusion thereon. One of these authorities is *People ex rel. Sutherland v. Governor*, 29 Mich. 320, 18 Am. Rep. 89 (opinion by Judge Cooley), from which the court quoted the following (127 Ind. page 593, 27 N. E. 177, 11 L. R. A. 763, 22 Am. St. Rep. 663): "The apportionment of power, authority and duty to the Governor, is either made by the people in the Constitution, or by the legislature in making laws under it; and the courts, when the apportionment has been made, would be presumptuous if they should assume to declare that a particular duty assigned to the Governor is not essentially executive, but is of such inferior grade and importance as properly to pertain to some inferior office, and consequently, for the purposes of their jurisdiction, the courts may treat it precisely as if an inferior officer had been required to perform it. To do this would be not only to question the wisdom of the Constitution or law, but also to assert a right to make the Governor *the passive instrument of the Judiciary in* executing its mandates within the sphere of its own duties."

After citing authorities that hold that the courts have jurisdiction to compel the chief executive of a State to perform an act which is purely ministerial in its nature, this court said in its opinion (127 Ind. 595, 596, 27 N. E. 177, 11 L. R. A. 763, 22 Am. St. Rep. 663): "The cases above cited, as well as all others of the same import, seem to rest chiefly upon the *dictum* of Chief Justice Marshall, in the case of *Marbury v. Madison*, 1 Cranch, 137 [2 L. Ed. 60]. \* \* \* We are not justified in assuming that Chief Justice Marshall would have used the same, or similar language, had the action been brought against the President of the United States; nor do we think the case is in point in an action against *the chief executive of the State*. \* \* \* The cases therefore, above cited, resting on the case of *Marbury v. Madison* in

which it was held that the chief executive of a State may be compelled, by *mandamus*, to perform ministerial duties, rests upon authority which does not sustain the conclusion reached, and *should not be followed*." In the same opinion, this court further said (127 Ind. 599, 27 N. E. 178, 11 L. R. A. 763, 22 Am. St. Rep. 663) regarding the attempt of one department of our government to perform duties imposed on another: "Such attempt would be usurpation, more dangerous to free government than the evil sought to be corrected. Should we attempt to control the Governor, \* \* \* we would be taking one step in the direction of absorbing the functions of the executive department of the State."

In Hartranft's Appeal, 85 Pa. 433, 27 Am. Rep. 667, cited with approval in *Hovey v. State*, *supra*, the lower court issued a writ of attachment against Governor Hartranft, and some other State officers, to compel them to appear as witnesses before a grand jury that was investigating a matter growing out of riots which occurred in 1877. It was insisted by the Governor that he was not liable to attachment for disobedience of the writ of subpoena. After setting out the provisions of the State Constitution (which are substantially the same as ours) the supreme court of Pennsylvania says: "Who then shall assume the power of the people and call this magistrate to an account for that which he has done in the discharge of his constitutional duties. If he is not the judge of when and how these duties are to be performed, who is. Where does the Court of Quarter Sessions, or any other court, get the power to call this man before it, and compel him to answer for the manner in which he has discharged his constitutional functions as executor of the laws and commander in chief of the militia of the commonwealth. \* \* \* If the Court of Quarter Sessions of Allegheny county can shut him up in prison for refusing to appear before it, \* \* \* why may it not commit him for a breach of the peace \* \* \* resulting from the discharge of his duties as commander in chief. \* \* \* In other words, if, from such analogy, we once begin to shift the supreme executive power from him upon whom the constitution has conferred it, to the judiciary, we may as well do the work thoroughly and constitute the courts the absolute *guardians and directors of all governmental functions whatever*. \* \* \* We need not waste time in the attempt to prove that this proposition is not allowable; that the Governor cannot thus be placed under the *guardianship and tutelage of the courts*. To the people, under the methods prescribed

by law, not to the courts, is he answerable for his doings or misdoings."

In *People ex rel. v. Morton*, 156 N. Y. 136, 50 N. E. 791, 41 L. R. A. 232, 66 Am. St. Rep. 547, where a writ of mandamus was sought against a board of which Governor Morton was a member, the court said: "But again, it is contended that in this case the executive is one of the board of officers, and that the board may be compelled to act by mandamus. Conceding him to be one of a board of public officers, the duty is one that devolves upon him by virtue of his office. If the courts have not power over his person to enforce its decrees in one case, they have not in the other. We have already referred to the discussion of Judge Cooley in the *Sutherland Case* (*People ex rel. Sutherland v. Governor*, 29 Mich. 320 [18 Am. Rep. 89], *supra*) with reference to the grade of duties imposed upon the executive, including ministerial acts, together with those involving executive judgment and discretion; and, without repeating his argument here, it seems to us that his reasoning is unanswerable and his conclusions correct."

Judge Cooley says in the *Sutherland Case*: "There is no very clear and palpable line of distinction between those duties of the Governor which are political, and those which are to be considered ministerial merely, and, if we should undertake to draw one, and declare that in all cases falling on one side of the line, the Governor was subject to judicial process, and in those falling on the other he was independent of it, we should open the doors to an endless train of litigation. \* \* \* However desirable a power in the judiciary to interfere in such cases might seem from the standpoint of interested parties, it is manifest that harmony of action between the executive and judicial departments would be directly threatened, and that the exercise of such power could only be justified on most imperative reasons."

In *Jonesboro v. Brown*, 8 Baxt. 495, 35 Am. Rep. 713, the supreme court of Tennessee said: "The Governor holds but one office; that is, the office of chief executive. Any duty which he performs under authority of law is an executive duty; otherwise we would have him acting in separate and distinct capacities. In some respects he would be the chief executive, an independent department of the government; as to other duties he would be a mere ministerial officer, subject to the mandate of any judge of the State, and we must assume, also, that the judge would have the power to imprison the Governor, if he refused to obey his

order, for if the court has this jurisdiction the power to enforce the judgment must follow."

In *Frost v. Thomas*, Governor (1899) 26 Colo. 222, 56 Pac. 899, 77 Am. St. Rep. 259, an action was brought to restrain the Governor from appointing officers for a newly created county, under an alleged unconstitutional act. In its opinion the supreme court of Colorado said: "But when the Governor, in pursuance of his executive authority, recognizes an act as legal, and is proceeding to execute its provisions, the courts cannot directly interfere with the discharge of his duties under it, merely because it is alleged that such an act is unconstitutional; \* \* \* and if the judicial department of the State should attempt, in a proceeding of this character, to compel the chief executive to refrain from the performance of his duties, under the act creating the new county, it would be an *usurpation of authority*. \* \* \*."

In *State v. Governor*, 25 N. J. Law, 331, in a mandamus action against the Governor, the Supreme Court of that State said: "All executive duty is required to be executed *by a higher authority than the order of this court*, viz., by the mandate of the Constitution. *The absence of discretionary power* cannot change the character of the act, or warrant the interposition of the judiciary. \* \* \* While it is the acknowledged duty of courts of justice to exert all their appropriate powers for the redress of private wrongs, it is no less a duty sedulously to guard against any encroachment upon the right, or usurpation of the powers, of the co-ordinate departments of government. In the delicate and complicated machinery of our republican system, it is of the utmost importance that each department of the government should confine itself strictly within the limits prescribed by the Constitution." In both the New Jersey and Colorado cases, the proceedings were commenced in the Supreme Court.

In *Mississippi v. Johnson*, 4 Wall. 475, 18 L. Ed. 437, a bill was sought to be filed in the Supreme Court of the United States by the State of Mississippi against Andrew Johnson, President, to enjoin him from enforcing certain alleged unconstitutional acts of Congress. In denying the injunction, the court, by Chief Justice Chase, said: "The single point which requires consideration is this: Can the President be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional. \* \* \* The duty thus imposed \* \* \* is purely *executive* and *political*. An attempt on the part of the judicial department \* \* \* to enforce the performance of such duties by the



President might be justly characterized, in the language of Chief Justice Marshall, as 'an absurd and excessive extravagance.'

\* \* \* It will hardly be contended that Congress can interpose, in any case, to restrain the enactment of an unconstitutional law; and yet how can the right to judicial interposition to prevent such an enactment, when the purpose is evident and the execution of that purpose certain, *be distinguished, in principle, from the right to such interposition against the execution of such a law by the President?* \* \* \* Suppose the bill filed and the injunction prayed for allowed. If the President refuses obedience, it is needless to observe that the court is *without power to enforce its process*. If, on the other hand, the President complies with the order of the court and refuses to execute the acts of Congress, is it not clear that a collision may occur between the executive and legislative departments of the government. *May not the House of Representatives impeach the President for such refusal?* And in that case could this court interfere, in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment. Would the strange spectacle be offered to the *public wonder of an attempt by this court to arrest proceedings in that court?* These questions answer themselves."

Under our laws, writs of injunction and mandate issue only from circuit and superior courts, the Supreme and Appellate Courts not having such power, except in aid of their own jurisdiction. There are more than sixty circuit and more than a score of superior court judges in this State. The Governor is a member of numerous boards, the other members of which reside in various counties. Any circuit or superior court of the State might acquire jurisdiction of the person of the Governor in a suit against the members of such boards. Indeed, had any member of the board of election commissioners resided in Vanderburgh county, this cause might have been instituted there.

Circuit court judges may err. Indeed, the power to determine a cause involves the power to decide it erroneously. The circuit court of Vanderburgh county might order the Governor by mandate (assuming the power to make and enforce the orders) to do a particular thing, and that of Lake county might enjoin him from doing a precisely similar act, and if he accept the construction of the law adopted by the Vanderburgh court, and obey it, he must pay the penalty of such obedience by removing his official residence to the Lake county jail. It might be possible, by various man-



damus and injunction suits, to keep the Governor in jail during his entire term of office, because he obeyed the law as construed by various circuit courts in writs of mandate, provided he were not, in the meantime, impeached for such obedience; and it might turn out, after all, that the injunctions he disobeyed were erroneously issued. Surely it was never contemplated by the builders of the government of the sovereign State of Indiana that any such spectacle of anarchy should be exhibited for public bewilderment. And if it be conceded that the court is without power to enforce its order of injunction against the Governor, the case against him ends, for, as said by Blackstone, the order of a court would be contemptible if there be no power of enforcement.

It is suggested that in performing a duty under the election laws the Governor is merely acting as a member of the election board, and is not performing an executive duty devolving on him as Governor. This idea is illusory. *Mississippi v. Johnson, supra*; *Georgia v. Stanton*, 6 Wall. 50, 18 L. Ed. 721; 2 High, Ind. (4th Ed.) Section 1323. The Constitution prohibits the Governor from holding any other office. He can perform no official duty except it be enjoined on him as the Governor. The plaintiff in his complaint recognizes this, because he says: "Thomas R. Marshall, because he is Governor of Indiana," is a member of the board.

The overwhelming weight of American authority is against the recognition of any distinction between ministerial and executive acts of the Governor in such cases as this. In 2 Spelling on Extraordinary Relief, Section 1206, it is said: "The doctrine denying the right of interference even with respect to duties usually considered as ministerial is supported by the clear weight of authority." High, Ex. Rem. Section 120; Merrill, Mandamus, Section 97. But, in no event can it justly be said that the Governor is acting in a ministerial capacity in refusing to enforce a statute because of its alleged unconstitutionality. Ministerial officers may not contest the constitutionality of a statute as a defense in proceedings against them for *disobedience* of its mandates, though they may do so in proceedings to *enforce* the performance of a statute. 8 Cyc. 789; *Hall v. People*, 90 N. Y. 498; *Newman v. People*, 23 Colo. 300, 47 Pac. 278; *Board v. Kenan*, 112 N. C. 566, 17 S. E. 485; *Dodd v. Board*, 56 N. J. Law, 258, 28 Atl. 311.

The presumption is that a statute is constitutional. This presumption is recognized by the courts, is binding on the executive, and surely binds ministerial officers. As said by the Supreme Court of North Carolina in *Board v. Kenan*, 112 N. C. 566, 17 S. E.

485: "If every subordinate officer in the machinery of the State government is to assume an act of the legislature to be in violation of the Constitution, and refuse to act under it, it might greatly obstruct its operation and lead to most mischievous consequences."

Our courts of last resort, in considering the question of the constitutionality of a statute, "exercise the gravest duty of a judge," and such duty will not be exercised in any doubtful case, nor then, unless necessary, and on the application of one interested. 8 Cyc. 787.

What is a "ministerial act"? This court has often defined it as one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, *without regard to, or the exercise of his own judgment upon the propriety of the act being done.* *Flournoy v. Jeffersonville*, 17 Ind. 169, 79 Am. Dec. 468; *Galey v. Board*, 174 Ind. 181, 91 N. E. 593.

The plaintiff in this case sues the Governor because he has decided to execute a law relating to submitting a certain question to the voters. Appellee claims it unnecessary to submit the question—the proposed new Constitution—because, even if ratified, it will be void. Had the Governor decided the proposed instrument will be void, if ratified, and had he further decided that because thereof it was not necessary to execute the law of 1889, this suit might not have been brought by appellee. But no one will contend that the Governor could be excused from violating the act of 1889, requiring him to submit the question, unless he had previously decided, in the faithful exercise of his judgment and discretion, that, if ratified, the proposed Constitution would be invalid.

In *Carr v. State* (1911) 93 N. E. 1071, 32 L. R. A. (N. S.) 1190, this court said: "The power given to courts to overthrow an act of the legislature is the highest and most solemn function with which they are vested." This rule is universally recognized. Can it be said that a Governor in deciding to disregard a statute is vested with a lower or less solemn function? If not, can it, with any pretense of reason, be said that, in such case, the act is ministerial because it involves *no exercise of judgment*?

Never has it been claimed that the law is an exact science. Is there concealed somewhere in the universe a device which automatically registers with mathematical precision the correct answers to constitutional questions? If there is, and if the Governor must be deemed, in performing his duties, to have availed him-

self of the use thereof, it seems unfortunate that the courts might not discover the device. That the determination of such questions involves the exercise of the highest judgment and discretion is shown by this court's opinions where former decisions have been overruled, and, even in the same case.

In *Smith v. Board*, 89 N. E. 867—a case of interest to nearly all the taxpayers and citizens of Indiana—it was held, without dissent, that many sections of the act concerning highways were unconstitutional and void. The opinion was filed November 18, 1909. A petition for rehearing was filed and granted, and it was finally held, in an opinion filed January 25, 1910, that said sections in controversy were valid and constitutional. *Smith v. Board*, 173 Ind. 364, 90 N. E. 881. Had the Governor, instead of this court, in November, 1909, decided these sections unconstitutional and refused to enforce them, can it be said justly that such action would have been merely ministerial?

While the right, by mandate, to order the Governor to perform purely ministerial duties has been recognized in some early cases by this court, it was held later, in *Hovey v. State*, 127 Ind. 588, 596, 27 N. E. 175, 177 (11 L. R. A. 763, 22 Am. St. Rep. 662), that the cases on which such authority rested "should not be followed," and this holding is in consonance with the weight of authority. No State court has ever held that a Governor may be enjoined from executing a statute because of its alleged unconstitutionality. The Supreme Court of the United States has held that the President could not be enjoined. *Mississippi v. Johnson*, *supra*.

Some cases have been cited showing injunctions granted by Federal courts against State executive officers in relation to the enforcement of acts of the State legislatures, void by reason of conflict with the Federal Constitution. These cases are not in point here. The distinction was pointed out in *Bates v. Taylor*, 87 Tenn. 319, 11 S. W. 266, 3 L. R. A. 316, in the following language: "Now, the most that can be said of these cases is that they show the jurisdiction of the Federal courts to restrain the Governor of a State from doing a wrongful act to the injury of individual rights. It is not even intimated in any one of them that the State courts have any such jurisdiction. There is a wide difference between the relation of the Federal judiciary and the State judiciary to the Governor of the State, and because of that difference the Federal decisions referred to are not at all in point in this case. A State's judiciary sustains the same relations to its Governor that the Fed-

eral judiciary does to the President of the United States, and as a State court, by reason of that relation, has no jurisdiction to coerce or restrain the Governor with respect to his official duties, so the Federal courts, for the same reason, have no power to interfere with the official actions of the President."

The doctrine of recognizing a power in the courts to enjoin a Governor from executing the acts of a co-ordinate department of the government, would involve a theory of tutelage and guardianship of the executive, by the judiciary, as novel as it would be intolerable. The inevitable result of such rule would be the absorption of all governmental power by the judicial department. Legislatures might just as well be enjoined in the first instance from enacting laws, for, as said by the Supreme Court of the United States, there is no difference in principle; and forms may always be disregarded. The expense of publishing the proposed Constitution in the acts of 1911 might have been saved by enjoining the legislature from submitting it to the people, and no different principle would have been involved from the one here. *Mississippi v. Johnson, supra.*

The analysis of government into three powers is as old as Aristotle, but to Montesquieu must be given the credit of developing the necessity of a separate department for the exercise of each of the three powers, to the end that civil liberty may be secured. In the formation of our American states, this division of power, except as expressly qualified, was made a fundamental principle. *Mauran v. Smith, Governor*, 8 R. I. 192, 5 Am. Rep. 564.

Daniel Webster said: "A separation of departments, so far as practicable, and the preservation of clear lines of division between them, is the fundamental idea in the creation of all our Constitutions, and, doubtless, the continuance of regulated liberty depends on *maintaining these boundaries.*" Webster's Works, vol. 4, p. 122.

The history of the decline and fall of republics, from the Grecian democracies to the time of the adoption of our American Constitutions, is a story of usurpation of power, growing from slight encroachments, increasing gradually, sometimes by imperceptible advances; but each infringement furnishing an excuse for another trespass, until the governmental structure either fell or became the citadel of arbitrary power.

A court of equity regards the substance, and not the form, of an act. This judgment, stripped of its forms, stands revealed as the



edict of the Marion circuit court, addressed to the electors of Indiana, and forbidding them to incorporate in their organic law the changes proposed. Such in form is not the order, but by enjoining the Governor and other officers from furnishing the voters with a certain kind of ballot—their only means of acting—the substantial end is reached of enjoining the electors from voting on a proposed constitutional change.

Our American Constitutions were erected by architects of consummate skill. Their foundations were supposed to be indestructible. Warned by the history of the Grecian and Italian republics, our fathers erected what they supposed were insurmountable barriers between the different departments of government. There are found in all the Constitutions similar provisions, in this respect; that of Indiana being as follows: "No person charged with official duties under one of these departments, shall exercise any of the functions of another." Const. art. 3.

Our type of Constitution has been copied by nearly all the governments of the Western Hemisphere, has served as the model for modern European republics, and at this time, just when the people of the world's most densely populated empire are seeking relief from usurped power by adopting our form of charter, ordained "to the end that justice be established, public order be maintained and liberty perpetuated," it is indeed unfortunate if the Supreme Court of Indiana should adopt a rule, which only a few months ago the Supreme Court of the United States declared, without dissent, involves a power in the judiciary to build a new government on the ruins of the present one. *Pacific, etc., Tel. Co. v. Oregon* (decided February 19, 1912), 223 U.S. 118, 32 Sup. Ct. 224, 56 L. Ed. —.

The lower court erred in holding that the Governor may be enjoined.

Appellants contend that the court erred in concluding as a matter of law that the provision of the proposed Constitution, empowering the General Assembly to legislate in reference to the initiative and referendum, is in conflict with the provisions of the Federal Constitution which guarantees to each State a republican form of government; that the question is a legislative or political one over which the courts have no jurisdiction.

When this cause was heard in the circuit court there was pending in the Supreme Court of the United States the case of *Pacific States Telephone & Telegraph Company* against the State of Oregon, which involved this identical question. The appellee



here, and his learned counsel, Hon. Addison C. Harris, as *amici curiae*, by leave of court, filed a brief in the Oregon cause, contending there, as in the Marion circuit court, for the rule declared by the latter.

The Oregon case was decided in February, 1912. The opinion was rendered by Chief Justice White, all the justices concurring. In the course of the opinion it was said:

"We premise by saying that, while the controversy which this record presents is of much importance, it is not novel. It is important since it calls upon us to decide whether it is the duty of the courts or the province of Congress to determine when a State has ceased to be republican in form, and to enforce the guaranty of the Constitution on that subject. It is not novel, as that question has long since been determined by this court conformably to the practice of the government from the beginning to be *political* in character, and, therefore, not cognizable by the judicial powers, but solely committed by the Constitution to the judgment of Congress.' \* \* \* Before immediately considering the text of Section 4 of Article 4, in order to uncover and give emphasis to *the anomalous and destructive effects upon both the State and national governments which the adoption of the proposition implies*, as illustrated by what we have just said, let us briefly fix the inconceivable expansion of the judicial power and the *ruinous destruction of legislative authority in matters purely political* which would necessarily be occasioned by giving sanction to the doctrine which underlies and would be necessarily involved in sustaining the propositions contended for. \* \* \* And as a consequence of the existence of such judicial authority, a power in the judiciary must be implied, unless it be that *anarchy is to ensue, to build by judicial action upon the ruins of the previously established government a new one*—a right which, by its terms, also implies the power to control the legislative department of the government of the United States in the recognition of such new government and the admission of representatives therefrom, as well as to strip the executive department of that government of its otherwise lawful and discretionary authority. Do the provisions of Section 4, Article 4, bring about these strange, far-reaching, and injurious results? That is to say, do the provisions of that article obliterate the *division between judicial authority and legislative power upon which the Constitution rests*? In other words, do they authorize the judiciary to substitute its judgment as to a matter purely political for the judgment of Congress on a subject committed to it, and *thus*

*overthrow the Constitution* upon the ground that thereby the guaranty to the States of a government republican in form may be secured—a conception which, after all, rests upon the assumption that the States are to be guaranteed a government republican in form by destroying the very existence of a government republican in form in the nation.

“We shall not stop to consider the text to point out how absolutely barren it is of support for the contentions sought to be based upon it, since the repugnancy of those contentions to the letter and spirit of that text is so conclusively established by prior decisions of this court as to cause the matter to be absolutely foreclosed. In view of the importance of the subject, the apparent misapprehension on one side and seeming misconception on the other, suggested by the argument as to the full significance of the previous doctrine, we do not content ourselves with a mere citation of the cases but state more at length than we otherwise would the issues and the doctrine expounded in the leading and absolutely controlling case—*Luther v. Borden*, 7 How. 1, 12 L. Ed. 581. \* \* \* It is indeed a singular misconception of the nature and character of our constitutional system of government to suggest that the settled distinction which the doctrine just stated points out between judicial authority over justiciable controversies and legislative power as to purely political questions tends to destroy the duty of the judiciary in proper cases to enforce the Constitution. \* \* \* As the issues presented, in their very essence, are, and have long since by this court been, definitely determined to be political and governmental, and embraced within the scope of the powers conferred upon Congress, and not, therefore, within the reach of judicial power, it follows that the case presented is not within our jurisdiction.”

It would seem that nothing need be added here to what was said by the Supreme Court of the United States, were it not for the fact that in this case the further question is presented of a conflict with the ordinance of 1787, and the Virginia Act of 1783 (11 Hening's St. at Large, p. 326).

In 1783, when the Northwest Territory was a wilderness, it was ceded by Virginia to the United States. In the act of cession it was provided that the territory ceded should be formed into distinct republican states. The ordinance of 1787 provides, among many other things, that the inhabitants of the territory shall ever be entitled to a proportionate representation of the people in the

legislature, and that the States formed in the territory shall be republican.

The right of trial by jury (of 12) was secured, and it was guaranteed that the title of the Indians to their lands should not be taken from them except by their consent. Article 4 provided that the territory and the states that may be formed therein "shall ever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation."

It is appellee's theory, adopted by the trial court, that the provisions of the above two instruments are binding here, and that the initiative and referendum clause, and other matters in the proposed Constitution, are in conflict with the provisions of each of the above instruments, and that the court has jurisdiction to declare the proposed Constitution void, for such reasons.

That the people of any of the sovereign States carved out of the Northwest Territory are bereft of power, for instance, to reduce the number of jurors composing a jury to less than 12, regardless of amendments to State or federal Constitutions, because of the provisions of the ordinance of 1787, would be but one of the many remarkable situations that would result from the position taken by appellee and the lower court. On such theory, we are confronted with a situation, not only as was said in the Oregon case, as between anarchy or building "by judicial action upon the ruins of the previously established government, a new one," but even such new one established by a judicial oligarchy must ever be fettered by the provisions of the ordinance of 1787. It would appear that the statement of the proposition suggests the proper answer.

The question involved on this branch of the case is purely political, and one over which the courts have no jurisdiction, and the Marion circuit court erred in holding otherwise.

Appellants next claim that the facts found do not warrant injunctive relief, because no substantial, positive injury is made to appear; because the cost to plaintiff of submitting the proposed Constitution is too trifling for consideration; that neither in person nor in property can appellee be affected, unless the instrument be ratified next November by the voters, which renders the question a speculative one merely; and because courts have no jurisdiction to enjoin the people from making Constitutions, or from voting.

That a taxpayer may, by a suit in equity, enjoin the unlawful levy of a municipal tax, or enjoin the unlawful expenditure of pub-

lic funds, whether he owns much or little property, is too well settled to require the citation of authorities. But this action cannot be fairly termed a taxpayer suit.

That a paragraph of a complaint must pursue a single definite theory is settled. Our Code (Burns' Stat. 1908, §343) requires that each cause of action shall be distinctly stated in separate paragraphs where the complaint contains more than one cause. While this alleges that appellee is a taxpayer, and that the action is brought for all the electors and taxpayers of the state, it cannot be believed that the appellee and his eminent counsel—both of whom have devoted their lives to the practice of law in Indiana, and are thoroughly familiar with our Code—intended to state in a single paragraph of complaint two or more causes of action. And while no demurrer nor motion to separate was filed in the court below, it is proper here to consider the theory of the complaint, which, in case of doubt, is determined by the general scope and character of the pleading. The theory most prominent in the complaint is that a cause of action brought by a citizen and elector, and the references therein to the plaintiff as a taxpayer, should be either disregarded as surplusage, or regarded as subsidiary averments in a complaint treated as filed by the plaintiff in his capacity as citizen and elector. That appellee himself attaches but little importance to the taxpayer feature of his complaint is evidenced by the scant attention given it in his brief.

Even if the complaint be deemed a suit in equity by a taxpayer, the facts found do not entitle appellee to any substantial relief. Expenses of holding State elections are borne in part by the treasuries of the several counties, and in part by that of the State. The court finds that the total cost to be occasioned will aggregate from \$1,000 to \$2,000, and that such expense will be borne by the State and several county treasuries. It fails to find any specific amount to be borne by the treasury of the State or that of Marion county—the only two in which plaintiff is interested. If all the expense were to be borne by the State treasury (which cannot occur), plaintiff's share of the \$1,000 would be about three cents—an amount so trifling as to invoke the doctrine of *de minimis non curat lex*. 1 Pomeroy, Eq. Rem. 2331; 1 High on Injunctions, §22; State v. Thorson, 9 S. D. 149, 68 N. W. 202, 33 L. R. A. 582.

Only one case similar to this one has been called to our attention. But if appellee's contention, that the proposed Constitution is not a new one, but merely a series of proposed amendments, be correct, then the case of State v. Thorson, *supra*,



is in point on every proposition involved in this branch of the discussion. In that case a suit was filed in the Supreme Court of South Dakota to enjoin the Secretary of State from certifying to county officers a proposed constitutional amendment. The court said:

"The relator is an elector and taxpayer. Defendant intends to, and will, unless restrained by injunction or other legal process, certify the question as a proposed constitutional amendment. The relator contends that the passage of the resolution, and the submission of the question embraced therein, are steps in an attempt to amend the State Constitution; that the methods prescribed for its amendment have not been complied with; therefore defendant has no authority to certify the same. \* \* \* He claims \* \* \* that the Constitution will not be changed, whatever reply may be returned. \* \* \*

"It is a familiar principle that substantial and positive injury must always be made to appear to the satisfaction of a court before it will grant an injunction, and acts which, however irregular and unauthorized, can have no injurious results, constitute no ground for relief. 1 High, Inj. §9. The party seeking an injunction must show, not only a clear legal right but a well-grounded apprehension of immediate injury. An injunction will not be granted where the injury is doubtful, or the violation of complainant's rights is merely speculative. Injury material and actual, not fanciful or theoretical, or merely possible, must be shown as the necessary or probable result of the action to be restrained. \* \* \* This court has no power to examine an act of the legislature generally and declare it unconstitutional. The limit of our authority in this respect is to disregard, as in violation of the Constitution, any act or part of an act which stands in the way of the legal rights of the suitor before us. \* \* \* It has not been shown nor can it be imagined, in what manner the relator will be injured by the contemplated action of defendant. If the legislature has proceeded properly, and its proposed amendment shall be ratified by the people, the relator will have no legal cause of complaint, because, as a good citizen of the State, he will be bound to cheerfully accept the lawfully expressed will of a majority of its sovereign electors. If, on the other hand, the action of the legislature was such as to render any answer to the question inoperative, the Constitution will not be modified, and no one will be affected. Any additional burden which might result to relator, as a taxpayer, by reason of submitting this question at a general elec-



tion, is too trifling, fanciful, and speculative for serious consideration. \* \* \*

"There is another view, which involves the structure of the State government and the relation of its several departments. Should it be conceded that the relator has such an interest in the matter as entitles him to be heard, or that the action involves a question of such public concern as would warrant an attempt by the Attorney General to obtain an injunction, could this court issue it? *No precedent for such action has been presented by counsel or discovered by the court.* In discussing this phase of the case it will be assumed an amendment of the Constitution was intended, requiring the concurrent action of the legislature and electors. The former has acted. Its action will be communicated to the latter by means of defendant's certificate. Until the latter shall have expressed their approval, the proceeding is incomplete, and the Constitution will remain unchanged. The proposed amendment is on its way to the electors. Can this court, at this time, impede its progress? Can it be called upon to anticipate conditions which may never exist? Can it interpose its process between the legislature and electors, who are alone with power to modify the fundamental law, before both have acted, and while the matter is pending and incomplete? The powers of the State government are divided into three distinct departments—the legislative, executive, and judicial. The powers and duties of each are prescribed by the Constitution. Const. Article 2. Power to amend the Constitution belongs exclusively to the legislature and electors. It is legislation of the most important character. This court has power to determine what such legislation is, what the Constitution contains, but not what it should contain. It has power to determine what statutory laws exist, and whether or not they conflict with the Constitution; but it cannot say what laws shall or shall not be enacted. It has the power and it is its duty, whenever the question arises in the usual course of litigation, wherein the substantial rights of any actual litigants are involved, to decide whether any statute has been legally enacted, or whether any change in the Constitution has been legally effected; but it will hardly be contended that it can interpose in any case to restrain the enactment of an unconstitutional law. *Mississippi v. Johnson*, 4 Wall. 500 [18 L. Ed. 437]. If the legislature cannot be enjoined when engaged in the enactment of unconstitutional statutes, it and the electors cannot be enjoined when engaged in an unwarranted attempt to amend the Constitution. *To issue an*

*injunction in this action would be to enjoin the legislature and electors in the exercise of their legislative duty.* Suppose a bill, having passed the legislature, is in possession of the Governor, or, to make the analogy more nearly complete, suppose it is being conveyed to the executive by an officer of the legislature; would any one imagine the progress of the messenger could be arrested by an injunction? The inquiry answers itself. *Is there any distinction in principle or reason between such a case and the case under discussion? Clearly none.* An injunction cannot be granted to prevent a legislative act by a municipal corporation. Comp. Laws 1887, §4650. The Code expresses the settled doctrine in this respect. Spell. Extr. Relief, §688. If courts cannot interfere with the legislative proceedings of a city council, they certainly cannot with like proceedings in the legislature itself. If they cannot prevent the legislature from enacting unconstitutional laws, they cannot prevent it and the electors from making ineffectual efforts to amend the Constitution. The fact that the present attempt is without precedent is of much weight against it. *Mississippi v. Johnson, supra.*"

The cogent reasoning of the South Dakota court applies with equal force here, for no one will pretend that the provisions of our proposed Constitution can ever have the effect of law unless approved by the people next November; and not then, unless free from conflict with the federal Constitution, and unless proposed in accordance with the terms of the present Indiana Constitution. The voters of the State may reject the instrument—and the only presumption now allowable is that they will do so if it violates the federal Constitution, or was proposed in violation of our present one. In such event, the preparation of briefs here, aggregating 500 or 600 printed pages; the oral argument, occupying thrice the time usually allowed; the long time necessarily spent by this court in considering this appeal, with the resultant further postponement in considering others long pending, and where the questions are real, and not moot, the expense occasioned to the State and parties by this appeal, aggregating vastly more than that of submitting the proposed instrument, will have been each and all in vain, for the writer feels assured that appellee will not contend that his motive in bringing this suit was to save his share of taxes to be caused by the submission, and amounting, as appellant's counsel facetiously remarks, to the "price of a postage stamp." As appellants well say, if this suit be deemed one for all the taxpayers and voters of the State, no possible relief is demand-

able, for the simple reason that the voters and taxpayers of the State hold in their own hands the power of issuing an injunction from which no appeal is permitted, by simply discharging their duty at the polls.

But in the opinion of the writer the decision of this really moot question, in favor of appellee, includes a new and erroneous departure from established doctrines of the division of governmental powers. Holding elections and voting involve the exercise of political powers only, and this injunction is really against the voters of the State. Heretofore courts of equity have ever been denied such power. \* \* \*

A further particular reason why courts should not enjoin the submission of proposed constitutional amendments by reason of some alleged infirmity is because they must be voted on, if ever, on a fixed day. It might happen that this court should decide, as in the highway case of *Smith v. Board*, *supra*, against the constitutionality of an amendment proposed for submission, and in the meantime, on petition for rehearing, *after the election*, reach a different conclusion. Such a situation might arise in this case. By assuming jurisdiction of such cases, the courts may deprive the people from amending their Constitutions by their confessedly erroneous action, the correction of which is prevented by lapse of time.

My apology for this long dissenting opinion is found in the gravity of the questions presented, and which is fully recognized by the Supreme Court of the United States and those of other States, but which is not, in my judgment, properly realized in the majority opinion.

There was a time in the history of the English people, when, by the combined usurped powers of the executive and the courts, members of Parliament were cast into prison, and its constitutional authority was insulted and defied by the courts until it almost ceased to exist. The Puritans, in despair, sought asylum in America. Macaulay, *Hist. Eng.* vol. 1, p. 90. The court of Star Chamber, guiltiest of all in usurping power, was abolished in 1640. 4 Black. Com. 267; Hallam, *Const. Hist.* 258, 292. Since then no English court has deigned to dictate to Parliament what laws it should, or should not, enact.

The descendants of the Puritans took no small part in framing our early American Constitutions. In all these the independence of the legislative department was thought to be impreguably guarded. Const. Ind. Article 4, §§8, 9, 16. All power is

inherent in the people (Const. Ind. Article 1, §1), and they alone may exercise the paramount legislative power of formulating a Constitution. *State v. Thorson, supra*. If the courts may dictate to the people, in advance, what provisions they may or may not insert in their Constitutions, they certainly cannot be denied the lesser power of dictating to the General Assembly what laws it may, or may not, enact.

The plaintiff here comes into court, demanding in advance of the electors expression of approval, or disapproval, of what he claims is a series of constitutional amendments, the determination and adjudication of their future validity, if approved, and if, in the opinion of the court, there is a prospective invalidity, that the voters of Indiana be restrained from voting on the proposition, by enjoining the Governor and other officers from supplying them with ballots that are so printed as to enable them to express their choice. This remarkable prayer was granted by the lower court, and is sanctioned by the majority opinion here. Since 1640, the courts of English speaking peoples have resolutely and invariably denied the existence of any such power, and I most earnestly protest against its revival now.

For the foregoing reasons, and for others set out in appellants' briefs, the circuit court had no jurisdiction of the cause of action, and the judgment should be reversed with instructions to sustain the motions in arrest of judgment.

Where the lower court has no jurisdiction of the subject-matter of the action, it is improper for this court to consider other questions urged. *State v. Thorson, supra*.

**522. Marshall Constitution—Dismissed by United States Supreme Court for Want of Jurisdiction. Marshall, Governor of the State of Indiana v. Dye (December 1, 1913).**

From the decision of the Supreme Court of the State of Indiana in the case of *Ellingham v. Dye*, an appeal on writ of error was taken to the Supreme Court of the United States, the plaintiffs in error alleging that there was a denial of Federal rights and that the judgment of the Supreme Court of the State of Indiana was in contravention of Article 4, Section 4 of the Constitution of the United States which provides that the United States shall guarantee to every State in the Union a republican form of government. The opinion of the Court was delivered by Mr. Justice Day and the case was dismissed for want of jurisdiction on the grounds that since "it is not alleged to violate rights of a personal nature, secured by the Federal Constitution or laws, "the judgment of the State Supreme Court is not reviewable here." The decision was rendered on December 1, 1913.



((231 U.S. 250, 58 L. Ed. 206, 34 Sup. Ct. 92))

The statute (Acts of 1911, p. 205), under which it was proposed to submit the new Constitution of the State, provided for its submission at the general election in November, 1912, and required the election officials and other officers to perform like duties to those required at general elections, with a view to the submission of such questions. The Supreme Court sustained the contention that the act was void under the State Constitution, holding in substance that the act of 1911 was unconstitutional for want of authority in the legislature to submit an entire constitution to the electors of the State for adoption or rejection, and that, if the instrument could be construed to be a series of amendments, it could not be submitted as such for the reason that Article 16 of the Constitution of the State requires that all amendments to the State Constitution shall, before being submitted to the electors, receive the approval of two general assemblies, which was not the case here, and that Article 16 further provides that while an amendment or amendments to the Constitution which had been agreed upon by one General Assembly are awaiting the action of a succeeding General Assembly or of the electors, no additional amendment or amendments shall be proposed, and that as a matter of fact another amendment was still awaiting the action of the electors.

The contention mainly urged by the plaintiffs in error of the denial of Federal rights is that the judgment below is in contravention of Article IV, Section 4, of the Constitution of the United States, which provides that the United States shall guarantee to every State in the Union a republican form of government. In *Pacific Telephone Co. v. Oregon*, 223 U. S. 118, this court had to consider the nature and character of that section, and held that it depended for enforcement upon political and governmental action through powers conferred upon the Congress of the United States. The full treatment of the subject in that case renders further consideration of that question unnecessary, and the contention in this behalf presents no justiciable controversy concerning which the decision is reviewable in this court upon writ of error from the State court. *Equitable Life Assurance Society v. Brown*, 187 U. S. 308, 314. And as to all questions said to be of a Federal character although the judgment of the Supreme Court rested solely upon its interpretation of the State Constitution, the



rulings are assailed because of alleged wrongs done to the plaintiffs in error in their official capacity only.

We have had frequent occasion to declare that the right of this court to review the judgment of the highest court of a State is circumscribed within the limits of §709 of the Revised Statutes, now §237 of the Judicial Code. See *Waters-Pierce Oil Co. v. Texas* 212 U. S. 86, and cases there cited. Among the limitations upon this right is the principle which requires those who seek to bring in review in this court the judgment of a State court to have a personal as distinguished from an official interest in the relief sought, and in the Federal right alleged to be denied by the judgment of the State court. This principle was laid down in *Smith v. Indiana*, 191 U. S. 138, in which it was held that the auditor of a county of the State of Indiana could not upon writ of error to this court have the judgment of the Supreme Court of Indiana declaring an exemption law of that State valid, and the performance of its provisions obligatory upon him, reviewed upon the ground that the act was repugnant to the Federal Constitution. The Court, Mr. Justice Brown delivering the opinion, said (p. 149):

"It is evident that the auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their non-performance was equally so. He neither gained nor lost anything by invoking the advice of the Supreme Court as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, viz., the taxpayers, and in this particular the case is analogous to that of *Caffery v. Oklahoma*, 177 U. S. 346. We think the interest of an appellant in this court should be a personal and not an official interest, and that the defendant, having sought the advice of the courts of his own State in his official capacity, should be content to abide by their decision."

In *Braxton County Court v. West Virginia*, 208 U. S. 192, it was held that, where the Supreme Court of West Virginia had compelled a county court by mandamus to lower its assessment so that it would be within the limit designated by a certain statute, this court would not entertain a writ of error to review the judgment of the State court, although the plaintiff in error had set up that the assessment contended for would not provide a sufficient amount to pay the expenses of the county, part of which it was alleged had by contract attached before the statute in ques-

tion was passed. Speaking for the court, Mr. Justice Brewer said, (p. 197):

"That the act of the State is charged to be in violation of the National Constitution, and that the charge is not frivolous, does not always give this court jurisdiction to review the judgment of a State court. The party raising the question of constitutionality and invoking our jurisdiction must be interested in and affected adversely by the decision of the State court sustaining the act, and the interest must be of a personal and not of an official nature. *Clark v. Kansas City*, 176 U. S. 114, 118; *Lampasas v. Bell*, 180 U. S. 276, 283; *Smith v. Indiana*, 191 U. S. 138, 148."

In the present case the Supreme Court of the State has enjoined the plaintiffs in error as officers of the State from taking steps to submit the proposed Constitution to the electors of the State, because in its judgment the act of the legislature of the State requiring such submission was in violation of the State Constitution. Whether this duty shall or shall not be performed concerns the plaintiffs in error in their official capacity only. The requirement that they refrain from taking such steps concerns their official and not their personal rights. Applying the rule established by the previous decisions of this court, it follows the judgment of the State Supreme Court is not reviewable here, as it is not alleged to violate rights of a personal nature, secured by the Federal Constitution or laws.

It, therefore, follows that this writ of error must be

*Dismissed.*

#### THE SIXTY-EIGHTH GENERAL ASSEMBLY (1913).

The Democrats had an overwhelming majority in the 68th session of 1913. In the Senate there were 40 Democrats, 8 Republicans and 2 Progressives. In the House there were 95 Democrats, 4 Republicans and 1 Progressive. The most important constitutional measure considered was the so-called Stotsenburg Resolutions, which embodied substantially the provisions which had been incorporated in the Marshall Constitution of 1911 and which had been declared invalid in *Ellingham v. Dye*. This resolution was adopted and submitted to the 69th session of 1915 for consideration. In addition to this measure, resolutions were introduced proposing constitutional amendments designed to extend the right of suffrage, and to withdraw from consideration by the people the pending lawyers amendment which was obstructive to other measures. Of the quasi-constitutional measures, the following are of more than passing importance: House bill No. 405 was designed to submit to the voters of cities and towns the question of the municipal ownership of waterworks. This bill was advanced to engrossment but not subsequently considered. Senate bill No. 132 provided for the initiative and referendum on ordinances granting franchises in cities and towns, but was

never advanced beyond engrossment. Senate bills Nos. 69 and 206 were designed to fix the political status of women by making women over twenty-one years of age and possessing residential qualifications eligible to the office of school trustee and school commissioner, in cities and towns and providing for the election of a female as school trustee in cities where school trustees are elected by the council. Senate bill No. 69 was withdrawn by the author. Senate bill No. 206 passed the Senate by a vote of 27-10, but the House took no action. A bill, Senate No. 306, providing for absent voting was indefinitely postponed.

**523. Governor Marshall's Reflections on the Constitution Case (January 9, 1913).**

In his message to the General Assembly on January 9, Governor Marshall indulged in the following reflections on the Supreme Court decision in *Ellingham v. Dye*, and informed the legislature that he had taken steps to have the case carried before the Supreme Court of the United States for final determination.

*[Senate Journal, Sixty-Eighth Session, 11.]*

The last General Assembly recognizing our unfortunate condition with reference to the amendment of the State Constitution, ordered presented for adoption or rejection by the people at the election in 1912, a new Constitution. An action was brought to enjoin and restrain the Governor and the other members of the State Board of Election Commissioners and the Secretary of State, from putting the question of adoption or rejection upon the ballot. The litigation resulted in a permanent injunction by the Indiana Supreme Court upon a divided opinion, three members of the Court being in favor of the injunction and two against it. In the majority opinion is found this language:

"There can be little doubt but that the framers of the revised Constitution of 1851 believed that in Article 16 they had provided an orderly method for making all the changes in the organic law which might be necessary. \* \* \* It is manifest that they held the views relating to future changes in the organic law which influenced the Convention of Massachusetts of 1820, of which Daniel Webster was a member and chairman of the Committee on Future Amendments, which reported in favor of the legislative mode of proposing amendments under guards and restrictions, and inserted no provision for calling a convention. In explaining the reason for the action, Mr. Webster said:

"It occurred to the committee that with the experience which we had had of the Constitution, there was little probability that after the amendments which should now be adopted, there

would ever be occasion for great changes. No revision of its general principles would be necessary and the alterations which should be called for by a change of circumstances would be limited and specific. It was, therefore, the opinion of the committee that no provision for a revision of the whole Constitution was expedient, and the only question was in what manner it should be provided that particular amendments might be obtained. It was a natural course and conformable to analogy and precedent in some degree that every proposition for amendment should originate in the legislature under certain guards and be sent out to the people.' (Deb., Mass. Con. 1820, pp. 413-414).

One thing is clearly disclosed by the review given by the proceedings of the convention on this subject and that is that it was the judgment of that body that an easy and wholly adequate method of making needed changes in the Constitution had been provided. \* \* \* It is the rule that where the means by which the power granted shall be exercised or specified, no other or different means for the exercise of such power can be implied even though considered more convenient or effective than the means given in the Constitution; and the Constitution gives special power to the legislature and provides the means of exercising it to effect needed changes in the organic law."

This last paragraph applies the doctrine that the expression of one thing is the exclusion of every other thing to a constitutional provision, though to my mind, it has no application. The maxim applies to ordinary statutes as a rule of action given by a superior to an inferior. In a constitution, a State vests its sovereign powers in three departments and then imposes by express provisions such restrictions on the exercise of these powers as may be desired.

With utmost respect for the majority of the Supreme Court, I felt that it had usurped the functions of the legislative and executive branches of government; that the sheriff of the court would have a rather interesting time in getting possession of my body and punishing me for contempt; and that such decisions gave greater impetus to the recall of judges and decisions than all the opinions of mere laymen touching the usurpations of the courts. Yet, I realized I might be wrong.

Though believing that it was making of the Supreme Court the only branch of government which we had, still I felt that while there was a possibility of a judicial review, I should not set myself up as a judge and resist by force of arms what to me was an



encroachment of the judiciary upon my constitutional rights. I was wholly unwilling to permit my personal views to result in anarchy. I believed that an orderly procedure with respect for the Court, however little respect I might hold for its opinion, was the one for me to pursue. I felt assured that the Supreme Court of the United States would not punish me for trying to be a law-abiding citizen by refusing to decide the great questions involved in this controversy upon the theory that they were not judicial but political in their character.

The question has now passed beyond the mere domain of party politics. The majority opinion leaves the State in doubt as to whether it can even call a constitutional convention, and as to whether our fathers did not foreclose upon posterity its right to alter and reform its system of government. It also leaves involved a far greater determination—that of the right of the Court to strip the legislature and executive of their constitutional rights and to set itself up, not as a co-ordinate, but as a supreme, branch of government.

In accordance with these views, I have sued out a writ of error to the Supreme Court of the United States with confidence that that Court will assume jurisdiction and decide the questions involved and with confidence that it will not dismiss the case and tell me that if I thought I was right, I should have totally disregarded the decision of the Supreme Court, defied its authority, thrown its sheriff out of my window, called out the militia to defend my position and submitted the question to the people regardless of the Court.

#### **524. Governor Ralston Recommends Calling Constitutional Convention (January 13, 1913).**

In his inaugural address, delivered on January 13, Governor Ralston declared himself in favor of calling a constitutional convention and expressed the conviction, based on the declaration of the three leading parties, that the people were in favor of holding a convention.

*[House Journal, Sixty-eighth Session, 72.]*

In my opening campaign speech last fall, I stated that while I personally favored a constitutional convention, I had no authority to commit my party to such a movement, but that without regard to my individual views, I would, in the event of my election, make such recommendations as to the advisability of calling a



convention as I believed fairly represented the views of the people.

What then are the views of the people on this subject?

The Democratic legislature in 1911 believed that the present Constitution of Indiana did not meet the requirements of the people, and so holding, it prepared for submission to the voters of Indiana a new Constitution.

The Progressive and the Republican parties, in their respective platforms of 1912, declared in favor of a constitutional convention. Unless the Democratic legislature of 1911 and the Progressive and Republican parties were all mistaken, the people of Indiana are in need of and want a new Constitution.

Is it strange that they should desire an up-to-date organic law? Their present Constitution was adopted more than sixty years ago. Since then the development of our State has been marvelous. Its population has greatly increased and its intellectual, social and material progress have multiplied many fold. New questions have arisen that cannot be solved under the present instrument and new conditions make it necessary for the people to assert rights they can not exercise thereunder.

What is a government for if it is not to serve the purpose of the people? Thomas Jefferson believed so strongly that this was the object of government that he maintained that a constitution should contain a provision for its revision every twenty years. There have been but few, if any, men in this State who excelled the late Governor Isaac P. Gray in ability accurately to interpret public sentiment. In his message to the legislature more than twenty years ago he strongly advocated the calling of a constitutional convention.

I have thus briefly stated the facts that I believe show that the people want a new constitution, and personally I favor a constitutional convention. I recognize that it is the duty of legislators, before favoring such a convention, to consider the expense of the same from the standpoint of their constituents, and in view of the present financial condition of the State and the money the State will be asked to raise in the near future for the Panama Exposition and a Memorial Building. I should also add in this connection that it is perfectly proper for the legislature to consider whether a convention should be called while the Constitution submitted by the legislature of 1911 is involved in litigation on appeal in the Supreme Court of the United States.

**525. Withdrawing Lawyers Amendment from Consideration (January 10, 1913).**

The lawyers amendment, as has been shown above, was neither adopted nor rejected and hence was obstructive to further amendments. In order to remove this insuperable obstacle from the path of constitutional progress, Senator Evan B. Stotsenburg proposed a unique plan for the removal of this obstruction. This plan contemplated the formal withdrawal of this resolution from further consideration by the people. The resolution was introduced on January 10. On February 13, the resolution was reported favorably, and it passed the Senate on February 21 by a vote of 38-0. The resolution was received in the House on February 24 and reported unfavorably by the Judiciary Committee on February 27. The resolution was subsequently recalled from the House and not considered further. (See the case called *In re Boswell*, Document No. 530).

*[Senate Journal, Sixty-eighth Session, 1112.]*

Engrossed Senate joint resolution No. 1, as follows: A joint resolution withdrawing from further consideration by the people of the State the proposed amendment to Section 21, Article 7, of the Constitution of the State of Indiana.

WHEREAS, The Sixty-sixth General Assembly of the State of Indiana submitted to the people of the State a proposed amendment to Section 21 Article 7, of the Constitution of the State; and

WHEREAS, Said proposed amendment was neither adopted nor rejected by the people of the State; and

WHEREAS, There is some doubt whether said amendment is still pending before the people of the State; therefore be it,

*Resolved by the General Assembly of the State of Indiana*, That said proposed amendment to Section 21, Article 7, of the Constitution of the State heretofore referred and submitted by the General Assembly of the State of Indiana to the people of the State, be and the same is hereby withdrawn from further consideration by the people.

**526. The Stotsenburg Amendments.**

The so-called Stotsenburg Amendments embodied practically the same amendments which had been included in the so-called Marshall Constitution. They were first introduced on January 10 as joint resolution No. 2. The consideration of this resolution was discontinued, however, and the proposed amendments were re-introduced in modified form.

## THE STOTSENBURG AMENDMENTS AS ORIGINALLY INTRODUCED (JANUARY 10, 1913).

[*Senate Journal, Sixty-eighth Session, 32.*]

Joint resolution No. 2, entitled: A joint resolution proposing and agreeing to the amendment of Section 12 of Article 1, Sections 2 and 4 of Article 2, Section 22 of Article 4, Section 14 of Article 5, Sections 1, 2 and 3 of Article 6, Sections 1, 2, 11, 20 and 21 of Article 7, Section 8 of Article 8, Section 1 of Article 10, and Section 1 of Article 12 of the Constitution of the State of Indiana, and providing for the reference of said proposed amendments to the next General Assembly.

WHEREAS, The Sixty-seventh General Assembly of the State of Indiana formulated and submitted to the people of the State of Indiana for their consideration and action a new Constitution for the State; and

WHEREAS, The courts of the State of Indiana enjoined the submission of said question to the electors of the State; and

WHEREAS, Said cause in which said injunction was issued is now pending before the Supreme Court of the United States upon writ of error; and

WHEREAS, In the event the Supreme Court of the United States fails or refuses to dissolve said injunction, it is desirable to amend the present Constitution of the State in several particulars; now, therefore,

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the several amendments to the Constitution of the State of Indiana set out in the several sections of this resolution are hereby separately proposed and agreed to by the General Assembly and are referred to the next General Assembly of this State for its consideration and agreement.

Sec. 2. That Section 12 of Article 1 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 12. All courts shall be open; and every man, for injury done him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law for injuries or death occurring in hazardous employment. In enacting such law the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

Sec. 3. That Section 2 of Article 2 of the Constitution of the State of Indiana, be amended to read as follows:

Sec. 2. In all elections every male citizen of the United

States, of the age of 21 years and upwards, who shall have resided in the State during the twelve months, and in the township sixty days, and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside, if he shall have been duly registered according to law. The General Assembly shall provide by law for the registration of voters before each general election: *Provided*, That the General Assembly may exempt from the operation of such registration law counties having a population of less than fifty thousand, as may be shown by the United States census last previous to each election.

On the first Monday in May, 1917, the question whether the right of suffrage shall be given to women shall be submitted for decision to the women of the State of the age of twenty-one years and upward and who possess the residential qualifications required of voters by this Constitution. For such purpose the Governor of the State shall on said day call a special election, to be conducted under the general election laws of the State, with the same procedure and penalties, but at such election only women possessing the above mentioned qualifications shall be permitted to vote. The question to be submitted at such election shall be, "Shall the right of suffrage be conferred upon women." If a majority of the votes cast at such election be in favor of said proposition, then thereafter all women who are citizens of the United States and who are of the age of twenty-one years or upward, and who possess the residential qualifications required of male voters, shall also have the right to vote in all elections.

The vote at said State election shall be canvassed by the several canvassing boards of the different counties of the State and the result certified to the Governor, who shall by proclamation announce the result of such election.

Sec. 4. That Section 4 of Article 2 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 4. No person shall be deemed to have lost his residence in this State by reason of his absence from the State, either on business of this State or of the United States; but any person absent from the State for twelve consecutive months for other reasons shall lose his residence unless, prior to the expiration of such year, he files with the clerk of the circuit court of the county in which he claims his residence, a declaration of his intent to hold his residence, and the exact location of the same.

Sec. 5. That Section 22 of Article 4 of the Constitution of the State of Indiana be amended to read as follows:



Sec. 22. The General Assembly shall not pass local or specific laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election and appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and impaneling grand and petit jurors and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;

In relation to interest on county funds;

Providing for opening and conducting the election of State, county or township officers, and designating the place of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.

But the General Assembly may adopt special charters for the different cities of the State.

Sec. 6. That Section 14 of Article 5 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objection at large upon its journal and proceed to reconsider the bill. If, after such reconsideration three-fifths of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it



shall be likewise reconsidered, and, if approved by three-fifths of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it has been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly. The Governor may veto any clause or clauses, item or items in any appropriation bill, and may approve the residue of such bill.

Sec. 7. That Section 1 of Article 6 of the Constitution of Indiana be amended to read as follows:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, a Treasurer of State, an Attorney-general, a Reporter of the Supreme Court and Clerk of the Supreme Court. Said officers and all other State officers created by law, and to be elected by the people, except Supreme Court judges, shall, severally, hold their offices for four years. They shall perform such duties as may be enjoined by law, and no person other than judges shall be eligible to any State office for more than four years in any period of eight years. Every officer, other than a judge, whose office shall be created by the General Assembly, shall hold his office for four years, and he shall not be eligible to any office for more than four years in any period of eight years.

Sec. 8. That Section 2 of Article 6 of the Constitution of Indiana be amended so as to read as follows:

Sec. 2. There shall be elected in each county by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years, and no person shall be eligible to either of said offices for more than four years in any period of eight years.

Sec. 9. That Section 3 of Article 6 of the Constitution of the State of Indiana be amended so as to read as follows:

Sec. 3. Such other county and township officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law. The term of any such officer shall be four years

and no person shall be eligible to either of said offices for more than four years in any period of eight years.

Sec. 10. That Section 1 of Article 7 of the Constitution of the State of Indiana be amended so as to read as follows:\*

Sec. 2. The Supreme Court shall consist of not less than three nor more than twelve judges. For the purpose of deciding cases such judges may by the General Assembly be divided into classes of not less than three each, and a majority of each class may be authorized to decide cases. If not so divided a majority of said court shall constitute a quorum. The term of office of such judges shall be fixed by the General Assembly, and such term shall not be less than six years nor more than twelve years, and such judges shall be permitted to serve for the term for which they were elected, if they so long behave well.

Sec. 12. That Section 11 of Article 7 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years, and shall not be eligible to hold said office more than four years in any period of eight years.

Sec. 13. That Section 20 of Article 7 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 20. The General Assembly shall, from time to time, take such steps as may be necessary for the codification of the laws of the State, and may on petition of fifty per centum of the qualified electors of the State at the last previous general election. The General Assembly shall adopt laws providing for the initiative, referendum and recall, both of State and local application. But no bill for the recall of the judiciary shall ever be passed.

Sec. 14. That Section 21 of Article 7 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 21. The General Assembly may by law provide for the qualifications of persons admitted to the practice of the law.

Sec. 15. That Section 8 of Article 8 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for four years, and whose duties and compensation shall be prescribed by law.

Sec. 16. That Section 1 of Article 10 of the Constitution of the State of Indiana be amended to read as follows:

Section 1. The General Assembly shall provide by law for the

\*((The *Senate Journal* omits Article 7, Section 1 as amended and Section 11 of this bill amending Article 7, Section 2. See p. 549 below for correct text.))

assessment of property for taxation and the raising of revenue thereby; and shall prescribe such regulations as shall seem a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specifically exempted by law. In enacting laws for the assessment of property for taxation the General Assembly shall have the right to classify the different kinds of property and to provide for a different manner and basis of assessment for each of such classes.

Sec. 17. That Section 1 of Article 12 of the Constitution of the State of Indiana be amended to read as follows:

Section 1. The militia shall consist of all able-bodied male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

Sec. 18. Each of the above proposed amendments to the Constitution of the State is proposed and agreed to as a separate proposition, and each of them is submitted to the next General Assembly as a separate proposition.

Sec. 19. The next General Assembly shall submit to the electors of the State as a separate proposition such of said proposed amendments as the next General Assembly may agree to.

THE STOTSENBURG AMENDMENTS AS ADOPTED BY THE SENATE  
(FEBRUARY 21, 1913).

On February 12, substantially the same amendments, embodied in Senate joint resolution No. 7 were introduced by Senator Stotsenburg. The resolution passed on February 21 by a vote of 34-8, and was submitted to the House in the following form:

*[Senate Journal, Sixty-eighth Session, 1115]*

Senate Joint Resolution No. 7

A joint resolution proposing and agreeing to the amendment of Section 12 of Article 1, Sections 2 and 14 of Article 2, Section 22 of Article 4, Section 14 of Article 5, Sections 1, 2 and 3 of Article 6, Sections 1, 2, 8, 11, 20 and 21 of Article 7, Section 8 of Article 8, Section 1 of Article 10, Section 13 of Article 11, Section 1 of Article 12, Section 1 of Article 15, Sections 1 and 2 of Article 16 of the Constitution of the State of Indiana, and providing for the reference of said proposed amendments to the next General Assembly.

WHEREAS, The Sixty-seventh General Assembly of the State of Indiana formulated and submitted to the people of the State of

Indiana for their consideration and action a new constitution for the State; and,

WHEREAS, The courts of the State of Indiana enjoined the submission of said question to the electors of the State; and,

WHEREAS, Said cause in which said injunction was issued is now pending before the Supreme Court of the United States upon a writ of error; and,

WHEREAS, In the event the Supreme Court of the United States fails or refuses to dissolve said injunction, it is desirable to amend the present Constitution of the State in several particulars; now, therefore,

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the several amendments to the Constitution of the State of Indiana set out in the several sections of this resolution are hereby separately proposed and agreed to by this, the Sixty-eighth General Assembly of the State of Indiana, and are referred to the next General Assembly of the State for its consideration and agreement.

Sec. 2. That Section 12 of Article 1 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 12. All courts shall be open; and every man, for injury done to him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law, for injuries or death occurring in hazardous employment. In enacting such law the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

Sec. 3. That Section 2 of Article 2 of said Constitution be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution every male citizen of the United States of the age of twenty-one years and upward who shall have resided in the State during the twelve months and in the township sixty days, and in the precinct thirty days immediately preceding such election, shall be entitled to vote in the precinct in which he may reside if he shall have been duly registered, if registration is required by law. The General Assembly shall provide by law for the registration of voters: *Provided*, That the General Assembly may exempt from the operation of any registration law counties having a population of less than fifty thousand inhabitants as shown by the last preceding United States census, and, in any



county so exempted, registration shall not be a qualification for voting.

Any person who was a voter under the provisions of Section 2 Article 2, of the Constitution of the State of Indiana, as amended March 24, 1881, shall continue to be a voter under this Constitution if he continues to reside in the State of Indiana, but before any such person shall be permitted to vote he shall have resided in the township sixty days and in the precinct thirty days immediately preceding the election, and be registered, if registration is required by law.

Sec. 4. That Section 14 of Article 2 of said Constitution be amended to read as follows:

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction by an election to be held for such officers only, at which time no other officer shall be voted for.

Sec. 5. That Section 22 of Article 4 of said Constitution be amended to read as follows:

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of the justices of peace and constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and impaneling grand and petit juries and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools and for the preservation of school funds;



In relation to fees or salaries except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;

In relation to interest on money;

Providing for opening and conducting the elections of State, county or township officers, and designating the place of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees;

But the General Assembly may adopt special charters for the different cities of the State.

Sec. 6. That Section 14 of Article 5 of said Constitution be amended to read as follows:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it shall have originated, which house shall enter the objection at large upon its journal and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly. The Governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

Sec. 7. That Section 1 of Article 6 of said Constitution be amended to read as follows:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, a Treasurer of State, Attorney-General, Reporter of the Supreme Court and Clerk of the Supreme Court; said officers and all other State officers created by law and to be

elected by the people, except Supreme Court judges, shall severally hold their office for four years. They shall perform such duties as may be enjoined by law; and no person other than judges shall be eligible to any one of said offices for more than four years in any period of eight years.

Sec. 8. That Section 2 of Article 6 of said Constitution be amended to read as follows:

Sec. 2. There shall be elected in each county by the voters thereof at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years; and no person shall be eligible to either of said offices for more than four years in any period of eight years.

Sec. 9. That Section 3 of Article 6 of said Constitution be amended to read as follows:

Sec. 3. Such other State, county and township officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law. The term of any such elective officer shall be four years, and no person shall be eligible to the same elective office for more than four years in any period of eight years. In order to permit the election of State, county and township officers at the same election, the General Assembly may provide that the officers in office at the time of the enactment of such a law may serve not longer than two years beyond their term of office.

Sec. 10. That Section 1 of Article 7 of said Constitution be amended to read as follows:

Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts and in such other courts of special, general or appellate jurisdiction as the General Assembly may establish.

Sec. 11. That Section 2 of Article 7 of said Constitution be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than three nor more than twelve judges. For the purpose of deciding cases such judges may be divided by the General Assembly into classes of not less than three each, and a majority of each class may be authorized to decide cases. If not so divided a majority of such court shall constitute a quorum. The term of office of such judges shall be fixed by the General Assembly and such term shall not be less than six years nor more than twelve years, and such judges

shall be permitted to serve for the term for which they were elected if they so long behave well.

Sec. 12. That Section 8 of Article 7 of said Cónstitution be amended to read as follows:

Sec. 8. The circuit courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law. Whenever the General Assembly shall deem it expedient it may create more than one circuit court in the same county, but each of such courts shall have equal and concurrent jurisdiction.

Sec. 13. That Section 11 of Article 7 of said Constitution be amended to read as follows:

Sec. 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years, and shall not be eligible to hold said office more than four years in any period of eight years.

Sec. 14. That Section 20 of Article 7 of said Constitution be amended to read as follows:

Sec. 20. The General Assembly shall, from time to time, take such steps as may be necessary for the codification of the laws of the State, and may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no law for the recall of the judiciary shall ever be passed. The General Assembly shall provide by law for the impeachment of all offices, including judges.

Sec. 15. That Section 21 of Article 7 of said Constitution be amended to read as follows:

Sec. 21. The General Assembly may by law provide for the qualifications of persons admitted to the practice of the law.

Sec. 16. That Section 8 of Article 8 of said Constitution be amended to read as follows:

Sec. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for four years and whose duties and compensation shall be prescribed by law.

Sec. 17. That Section 1 of Article 10 of said Constitution be amended to read as follows:

Section 1. The General Assembly shall provide by law for the assessment of property for taxation and the raising of revenue thereby; and shall prescribe such regulations as shall secure a just valuation for taxation of all property both real and personal, excepting such only, for municipal, educational, literary, scientific,

religious or charitable purposes, as may be specifically exempted by law. In enacting laws for the assessment of property for taxation, the General Assembly shall have the right to classify different kinds of property, and to provide for a different manner and basis of assessment and rate of taxation for each class.

Sec. 18. That Section 13 of Article 11 of said Constitution be amended to read as follows:

Sec. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws. The General Assembly shall have power to amend or alter the charters of all corporations and voluntary associations.

Sec. 19. That Section 1 of Article 12 of said Constitution be amended to read as follows:

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this State, and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

Sec. 20. That Section 1 of Article 15 of said Constitution be amended to read as follows:

Section 1. All State officers whose appointments are not otherwise provided for in this Constitution shall be elected by the people or appointed as may be provided by law; and all municipal and local officers shall be elected or appointed as provided by law; and no officer shall have his salary, compensation or emoluments increased during the period for which he was elected.

Sec. 21. That Section 1 of Article 16 of said Constitution be amended to read as follows:

Section 1. Any amendment or amendments to this Constitution may be proposed at a regular session in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals; and it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election, and if a majority of said electors voting on such amendment or amendments shall ratify the same, such amendment or amendments shall become a part of the Constitution; but if a majority of said electors shall not verify the same, such amendment or amendments shall be defeated. Any political party may declare for or against any amendment, in convention, and have such declaration made a



part of its ticket for submission to the electors. No new Constitution shall be submitted to the people of this State for ratification and adoption or rejection, until by virtue of an act of the General Assembly a majority of the legal voters of the State have declared in favor of a constitutional convention; when and whereupon such constitutional convention shall be convened in such manner as the General Assembly may provide; but any Constitution by such convention proposed shall be submitted to the voters of this State for ratification or rejection at a general or special election as may be ordered by the General Assembly.

Sec. 22. That Section 2 of Article 16 of said Constitution be amended to read as follows:

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors may vote for or against each of such amendments separately.

Sec. 23. Each of the above proposed amendments to the Constitution of the State is proposed and agreed to as a separate proposition, and each of them is submitted to the next General Assembly as a separate proposition.

Sec. 24. The next General Assembly shall submit to the electors of the State as a separate proposition such of said proposed amendments as it may agree to.

#### HOUSE COMMITTEE REPORT ON STOTSENBURG AMENDMENTS (MARCH 3, 1913).

The resolution was read in the House a first time on February 25 and referred to the Committee on Judiciary A. On March 3, the Committee submitted the following report which was concurred in.

*[House Journal, Sixty-eighth Session, 1916.]*

Your Committee on Judiciary A, to which was referred Senate joint resolution No. 7, has had the same under consideration and begs leave to report the same back to the House, with the recommendation that said resolution be amended by adding a new section to be numbered Section 19½, to read as follows:

Sec. 19½. That Section 1 of Article 13 of said Constitution be amended to read as follows:

Section 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, except as in this section provided, to an amount exceeding in the aggregate, two per centum of the value of the taxable property within such corporation, to be ascertained by the last assessment



for State and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount, given by such corporation, shall be void: *Provided*, That for the purpose of public protection and defense, in time of war, foreign invasion or other great public calamity, or for the purpose of constructing, or otherwise acquiring, any work of public utility necessary or convenient for the people of such corporation, the municipal authorities in their discretion, may incur the necessary obligations when authorized by a majority of the electors, within the limits of the corporation, voting upon the question; and no debt so authorized and incurred shall be included in determining the debt of the corporation.

And when so amended it be adopted.

HOUSE AMENDMENT PROHIBITING EXTENSION OF TERMS OF OFFICERS (MARCH 3, 1913).

Immediately after the submission of the committee's report, the following motion was made by Mr. W. W. Spencer of Marion and adopted.

[*House Journal, Sixty-eighth Session, 1677.*]

I move that Senate joint resolution No. 7 be amended by adding at the end of Section 20 a comma and the words, "nor shall any law be framed extending the term of any officer beyond the term for which such officer was elected".

HOUSE AMENDMENT PROVIDING A BI-SECTED SESSION (MARCH 8, 1913).

On March 8, the resolution was read a third time, Mr. William P. Miedreich offered the following amendment which was adopted by unanimous consent and ordered engrossed.

[*House Journal, Sixty-eighth Session, 2071.*]

I move that engrossed Senate joint resolution No. 7 be recommitted to a committee of one, the undersigned, with specific instructions to amend by adding to it section numbered nineteen and three-fourths (19 $\frac{3}{4}$ ) as follows, to-wit:

"The General Assembly shall meet on the Thursday next after the first Monday of January next after the election and shall remain in session for thirty days, unless sooner adjourned, for the purpose of introducing bills to be enacted into laws; shall then adjourn for a period of not less than sixty days, during which time said proposed bills shall be considered by the members of said Gen-

eral Assembly, together with their constituents. The General Assembly shall then re-convene upon the day as fixed by the previous session for the purpose of approving, voting on and enacting into laws any or all of said proposed bills.

"The General Assembly shall not be in session more than sixty-one days in the two terms, as herein provided."

#### THE STOTSENBURG AMENDMENTS AS PASSED BY THE HOUSE.

The resolution, with the proposed amendments, was then adopted by a vote of 73-2. The resolution as it passed the House consisted of the original Senate resolution together with the new sections numbered 19½ and 19¾ and the additional clause supplementing Section 20. Among the engrossed amendments as set forth in the House Journal, the Section numbered 19¾ proposed by Mr. Meidreich does not appear. The resolution and engrossed amendments as set forth in the House Journal are as follows.

[*House Journal, Sixty-eighth Session, 2072.*]

Engrossed House Amendments to engrossed Senate joint resolution No. 7 being:

A joint resolution proposing and agreeing to the amendment of Section 12 of Article 1, Sections 2 and 14 of Article 2, Section 22, of Article 4, Section 14 of Article 5, Sections 1, 2 and 3 of Article 6, Sections 1, 2, 8, 11, 20 and 21 of Article 7, Section 8 of Article 8, Section 1 of Article 10, Section 13 of Article 11, Section 1 of Article 12, Section 1 of Article 15, Section 1 and 2 of Article 16 of the Constitution of the State of Indiana, and providing for the reference of said proposed amendments to the next General Assembly.

WHEREAS, The Sixty-seventh General Assembly of the State of Indiana formulated and submitted to the people of the State of Indiana for their consideration and action a new Constitution for the State, and,

WHEREAS, The courts of the State of Indiana enjoined the submission of said question to the electors of the State; and,

WHEREAS, Said cause in which said injunction was issued is now pending before the Supreme Court of the United States upon a writ of error; and,

WHEREAS, In the event the Supreme Court of the United States fails or refuses to dissolve said injunction, it is desirable to amend the present Constitution of the State in several particulars; now, therefore,

Section 1. *Be it resolved by the General Assembly of the State of Indiana, That the several amendments to the Constitution of the*

State of Indiana set out in the several sections of this resolution are hereby separately proposed and agreed to by this the Sixty-eighth General Assembly of the State of Indiana, and are referred to the next General Assembly of the State for its consideration and agreement.

Sec. 2. That Section 12 of Article 1 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 12. All courts shall be open; and every man, for injury done to him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workmen's compulsory compensation law, for injuries or death occurring in hazardous employment. In enacting such law, the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

Sec. 3. That Section 2 of Article 2 of said Constitution be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the twelve months, and in the township sixty days, and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside if he shall have been duly registered, if registration is required by law. The General Assembly shall provide by law for the registration of voters: *Provided*, That the General Assembly may exempt from the operation of any registration law, counties, having a population of less than fifty thousand inhabitants as shown by the last preceding United States census, and, in any county so exempted, registration shall not be a qualification for voting.

Any person who was a voter under the provisions of Section 2 Article 2 of the Constitution of the State of Indiana, as amended March 24, 1881, shall continue to be a voter under this Constitution, if he continues to reside in the State of Indiana, but before any such person shall be permitted to vote he shall have resided in the township sixty days and in the precinct thirty days immediately preceding the elections, and be registered, if registration is required by law.

Sec. 4. That Section 14 of Article 2 of said Constitution be amended to read as follows:

Sec. 14. All general elections shall be held on the first Tues-

day after the first Monday in November, but township elections may be held at such times as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction by an election to be held for such officers only, at which time no other officer shall be voted for.

Sec. 5. That Section 22 of Article 4 of said Constitution be amended to read as follows:

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of the justices of peace and constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and impaneling grand and petit juries and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools and for the preservation of school funds;

In relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary service required;

In relation to interest on money;

Providing for opening and conducting the elections of State, county or township officers, and designating the place of voting;

Providing for the sale of real estate belonging to unions or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees;

But the General Assembly may adopt special charters for the different cities of the State.

Sec. 6. That Section 14 of Article 5 of said Constitution be amended to read as follows:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter objection, at large upon its Journal, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered, and, if approved by a majority of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly.

The Governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

Sec. 7. That Section 1 of Article 6 of said Constitution be amended to read as follows:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, a Treasurer of State, Attorney-General, Reporter of the Supreme Court, and Clerk of the Supreme Court; said officers and all other State officers created by law and to be elected by the people, except Supreme Court judges, shall severally hold their office for four years. They shall perform such duties as may be enjoined by law; and no person other than judges shall be eligible to any one of said offices for more than four years in any period of eight years.

Sec. 8. That Section 2 of Article 6 of said Constitution be amended to read as follows:

Sec. 2. There shall be elected in each county by the voters thereof at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years; and no



person shall be eligible to either of said offices for more than four years in any period of eight years.

Sec. 9. That Section 3 of Article 6 of said Constitution be amended to read as follows:

Sec. 3. Such other State, county and township officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law. The term of any elective officer shall be four years, and no person shall be eligible to the same elective office for more than four years in any period of eight years. In order to permit the election of State, county and township officers at the same election, the General Assembly may provide that the officers in office at the time of the enactment of such a law may serve not longer than two years beyond their term of office.

Sec. 10. That Section 1 of Article 7 of said Constitution be amended to read as follows:

Section 1. The judicial power of the State shall be vested in the Supreme Court, in circuit courts and in such other courts of special, general or appellate jurisdiction as the General Assembly may establish.

Sec. 11. That Section 2 of Article 7 of said Constitution be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than three nor more than twelve judges for the purpose of deciding cases, such judges may be divided by the General Assembly into classes of not less than three each, and a majority of each class may be authorized to decide cases. If not so divided, a majority of such court shall constitute a quorum. The term of office of such judges shall be fixed by the General Assembly, and such term shall not be less than six years nor more than twelve years, and such judges shall be permitted to serve for the term for which they were elected if they so long behave well.

Sec. 12. That Section 8 of Article 7 of said Constitution be amended to read as follows:

Sec. 8. The circuit courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law. Whenever the General Assembly shall deem it expedient it may create more than one circuit court in the same county, but each of such courts shall have equal and concurrent jurisdiction.

Sec. 13. That Section 11 of Article 7 of said Constitution be amended to read as follows:

Sec. 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years, and shall not be eligible to hold said office more than four years in any period of eight years.

Sec. 14. That Section 20 of Article 7 of said Constitution be amended to read as follows:

Sec. 20. The General Assembly shall, from time to time, take such steps as may be necessary for the codification of the laws of the State, and may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no law for the recall of the judiciary shall ever be passed. The General Assembly shall provide by law for the impeachment of all officers, including judges.

Sec. 15. That Section 21 of Article 7 of said Constitution be amended to read as follows:

Sec. 21. The General Assembly may by law provide for the qualifications of persons admitted to the practice of the law.

Sec. 16. That Section 8 of Article 8 of said Constitution be amended to read as follows:

Sec. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for four years and whose duties and compensation shall be prescribed by law.

Sec. 17. That Section 1 of Article 10 of said Constitution be amended to read as follows:

Section 1. The General Assembly shall provide by law for the assessment of property for taxation and the raising of revenue thereby; and shall prescribe such regulations as shall secure a just valuation for taxation of all property both real and personal, excepting such only, for municipal, educational, literary, scientific, religious or charitable purposes, as may be specifically exempted by law. In enacting laws for the assessment of property for taxation the General Assembly shall have the right to classify different kinds of property and to provide for a different manner and basis of assessment and rate of taxation for each class.

Sec. 18. That Section 13 of Article 11 of said Constitution be amended to read as follows:

Sec. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws. The General Assembly shall have power to amend, or alter the charters of all corporations and voluntary associations.

Sec. 19. That Section 1 of Article 12 of said Constitution be amended to read as follows:

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

Sec. 20. That Section 1 of Article 15 of said Constitution be amended to read as follows:

Section 1. All State officers whose appointments are not otherwise provided for in this Constitution, shall be elected by the people or appointed as may be provided by law; and all municipal and local officers shall be elected or appointed as provided by law; and no officer shall have his salary, compensation or emoluments increased during the period for which he was elected.

Sec. 21. That Section 1 of Article 16 of said Constitution be amended to read as follows:

Section 1. Any amendment or amendments to this Constitution may be proposed at a regular session of either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals; and it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election, and if a majority of said electors voting on such amendment or amendments shall ratify the same, such amendment or amendments shall become a part of the Constitution; but if a majority of said electors shall not ratify the same, such amendment or amendments shall be defeated. Any political party may declare for or against any amendment, in convention, and have such declaration made a part of its ticket for submission to the electors. No new Constitution shall be submitted to the people of this State for ratification and adoption or rejection, until, by virtue of an act of the General Assembly a majority of the legal voters of the State have declared in favor of a constitutional convention; when and whereupon such constitutional convention shall be convened in such manner as the General Assembly may provide; but any Constitution by such convention proposed shall be submitted to the voters of this state for ratification or rejection at a general or special election as may be ordered by the General Assembly.

Sec. 22. That Section 2 of Article 16 of said Constitution be amended as follows:

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors may vote for or against each of such amendments separately.

Sec. 23. Each of the above proposed amendments to the Constitution of the State is proposed and agreed to as a separate proposition, and each of them is submitted to the next General Assembly as a separate proposition.

Sec. 24. The next General Assembly shall submit to the electors of the State as a separate proposition such of said proposed amendments as it may agree to.

STOTSSENBURG AMENDMENTS AS AMENDED IN CONFERENCE COMMITTEE (MARCH 10, 1913).

On March 10, the resolution as amended was referred to the Senate, and the Senate refused to concur. Thereupon a Conference Committee was appointed. The report of the Conference Committee was submitted on the afternoon of the same day, March 10, and was concurred in by both houses. The vote on concurrence in the Senate was 35-8, and in the House 53-18.

[*Senate Journal, Sixty-eighth Session, 1959.*]

Your committee appointed to confer with a like committee from the House on engrossed House amendments to engrossed Senate joint resolution No. 7, would respectfully report that they have concurred and agreed as follows:

First, that the Senate agrees to engrossed House amendment No. 1.

Second, that engrossed House amendment No. 2 be amended to read as follows: By adding to the end of Section 20 of said resolution a comma in lieu of the period and thereafter there be added the following words: "nor shall any law be passed extending the term of any officer beyond the term for which such officer was elected, except as provided in Section 3, Article 6, of this Constitution."

Third, that the House recede from engrossed House amendment No. 3.

Fourth, that the title of such joint resolution be amended as follows: By adding after the figures "12," in line 12 of the title

(reference being had to the engrossed copy) the following words and figures: "Section 1, Article 13."

EVAN B. STOTSENBURG,  
GEO. W. CURTIS,  
Senate Conferees.  
W. W. SPENCER,  
CHAS. F. STEVENS,  
House Conferees.

STOTSENBURG AMENDMENTS AS FINALLY ADOPTED.

The resolution as finally adopted was ordered spread on the Journals of both houses but it appears in the House Journal only.

[*House Journal, Sixty-eighth Session, 2143.*]

Engrossed Senate joint resolution No. 7, being: A joint resolution proposing and agreeing to the amendment of Section 12 of Article 1, Sections 2 and 14 of Article 2, Section 22 of Article 4, Section 14 of Article 5, Sections 1, 2 and 3 of Article 6, Sections 1, 2, 8, 11, 20, and 21 of Article 7, Section 8 of Article 8, Section 1 of Article 10, Section 13 of Article 11, Section 1 of Article 12, Section 1 of Article 13, Section 1 of Article 15, Sections 1 and 2 of Article 16 of the Constitution of the State of Indiana, and providing for the reference of said proposed amendments to the next General Assembly.

WHEREAS, The Sixty-seventh General Assembly of the State of Indiana formulated and submitted to the people of the State of Indiana for their consideration and action a new Constitution for the State; and,

WHEREAS, The courts of the State of Indiana enjoined the submission of said question to the electors of the State; and,

WHEREAS, Said cause in which said injunction was issued is now pending before the Supreme Court of the United States upon a writ of error; and,

WHEREAS, In the event the Supreme Court of the United States fails or refuses to dissolve said injunction it is desirable to amend the present Constitution of the State in several particulars; now, therefore,

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the several amendments to the Constitution of the State of Indiana set out in the several sections of this resolution are hereby separately proposed and agreed to by this Sixty-eighth General Assembly of the State of Indiana, and are referred to the next General Assembly of the State for its consideration and agreement.



Sec. 2. That Section 12 of Article 1 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 12. All courts shall be open; and every man, for injury done to him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law for injuries or death occurring in hazardous employment. In enacting such law, the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

Sec. 3. That Section 2 of Article 2 of said Constitution be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the twelve months, and in the township sixty days, and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside if he shall have been duly registered, if registration is required by law. The General Assembly shall provide by law for the registration of voters; *Provided*, That the General Assembly may exempt from the operation of any registration law, counties having a population of less than fifty thousand inhabitants as shown by the last preceding United States census, and in any county so exempted, registration shall not be a qualification for voting.

Any person who was a voter under the provisions of Section 2, Article 2, of the Constitution of the State of Indiana, as amended March 24, 1881, shall continue to be a voter under this Constitution, if he continues to reside in the State of Indiana, but before any such person shall be permitted to vote he shall have resided in the township sixty days and in the precinct thirty days immediately preceding the election, and be registered, if registration is required by law.

Sec. 4. That Section 14 of Article 2 of said Constitution be amended to read as follows:

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction by an

election to be held for such officers, only, at which time no other officer shall be voted for.

Sec. 5. That Section 22 of Article 4 of said Constitution be amended to read as follows:

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of the justices of peace and constables; for the punishment of crimes and misdemeanors; regulating the practice in courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; for laying out, opening, and working on highways, and for the election or appointment of supervisors; vacating roads, town plats, streets, alleys and public squares; summoning and impaneling grand and petit juries and providing for their compensation; regulating county and township business; regulating the election of county and township officers, and their compensation; for the assessment and collection of taxes for State, county, township or road purposes; providing for supporting common schools and for the preservation of school funds, in relation to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required; in relation to interest on money; providing for opening and conducting the elections of State, county or township officers, and designating the place of voting; providing for the sale of real estate, belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees; but the General Assembly may adopt special charters for the different cities of the State.

Sec. 6. That Section 14 of Article 5 of said Constitution be amended to read as follows:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objection, at large, upon its Journal, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him,

it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly. The Governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

Sec. 7. That Section 1 of Article 6 of said Constitution be amended as follows:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, a Treasurer of State, Attorney-General, Reporter of the Supreme Court, and Clerk of the Supreme Court; and all other State officers created by law and to be elected by the people, except Supreme Court judges, shall severally hold their office for four years. They shall perform such duties as may be enjoined by law; and no person other than judges shall be eligible to any one of said offices for more than four years in any period of eight years.

Sec. 8. That Section 2 of Article 6 of said Constitution be amended to read as follows:

Sec. 2. There shall be elected in each county by the voters thereof at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years; and no person shall be eligible to either of said offices for more than four years in any period of eight years.

Sec. 9. That Section 3 of Article 6 of said Constitution be amended to read as follows:

Sec. 3. Such other State, county and township officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law. The term of any elective office shall be four years and no person shall be eligible to the same elective office for more than four years in any period of eight years. In order to permit the election of State, county and township officers at the same election, the General Assembly may provide that the officers in office at the time of the enactment of such a law may serve not longer than two years beyond their term of office.

Sec. 10. That Section 1 of Article 7 of said Constitution be amended to read as follows:

Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts and in such other courts of special, general or appellate jurisdiction as the General Assembly may establish.

Sec. 11. That Section 2 of Article 7 of said Constitution be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than three nor more than twelve judges. For the purpose of deciding cases, such judges may be divided by the General Assembly into classes of not less than three each, and a majority of each class may be authorized to decide cases. If not so divided a majority of such court shall constitute a quorum. The term of office of such judges shall be fixed by the General Assembly, and such term shall not be less than six years nor more than twelve years, and such judges shall be permitted to serve for the term for which they were elected, if they so long behave well.

Sec. 12. That Section 8 of Article 7 of said Constitution be amended to read as follows:

Sec. 8. The circuit courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law. Whenever the General Assembly shall deem it expedient it may create more than one circuit court in the same county, but each of such courts shall have equal and concurrent jurisdiction.

Sec. 13. That Section 11 of Article 7 of said Constitution be amended to read as follows:

Sec. 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years, and shall not be eligible to hold said office more than four years in any period of eight years.

Sec. 14. That Section 20 of Article 7 of said Constitution be amended to read as follows:

Sec. 20. The General Assembly shall, from time to time, take such steps as may be necessary for the codification of the laws of the State, and may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no law for the recall of the judiciary shall ever be passed. The General Assembly shall provide by law for the impeachment of all officers, including judges.



Sec. 15. That Section 21 of Article 7 of said Constitution be amended to read as follows:

Sec. 21. The General Assembly may by law provide for the qualification of persons admitted to the practice of the law.

Sec. 16. That Section 8 of Article 8 of said Constitution be amended to read as follows:

Sec. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for four years and whose duties and compensation shall be prescribed by law.

Sec. 17. That Section 1 of Article 10 of said Constitution be amended to read as follows:

Section 1. The General Assembly shall provide by law for the assessment of property for taxation and the raising of revenue thereby; and shall prescribe such regulations as shall secure a just valuation for taxation of all property both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specifically exempted by law. In enacting laws for the assessment of property for taxation the General Assembly shall have the right to classify different kinds of property, and to provide for a different manner and basis of assessment and rate of taxation for each class.

Sec. 18. That Section 13 of Article 11 of said Constitution be amended to read as follows:

Sec. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws. The General Assembly shall have power to amend, or alter the charters of all corporations and voluntary associations.

Sec. 19. That Section 1 of Article 12 of said Constitution be amended to read as follows:

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

Sec. 19½. That Section 1 of Article 13 of said Constitution be amended to read as follows:

Section 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, except as in this section provided, to an amount exceeding, in the aggregate, two per centum of the value of the taxable property within such corporations, to be ascertained by the last assess-



ment for State and county taxes previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporation, shall be void: *Provided*, That, for the purpose of public protection and defense, in time of war, foreign invasion, or other great public calamity, or for the purpose of constructing, or otherwise acquiring any work of public utility, necessary or convenient for the people of such corporation, the municipal authorities, in their discretion, may incur the necessary obligations, when authorized by a majority of the electors, within the limits of the corporation, voting upon the question; and no debt so authorized and incurred shall be included in determining the debt limit of the corporation.

Sec. 20. That Section 1 of Article 15 of said Constitution be amended to read as follows:

Section 1. All State officers whose appointments are not otherwise provided for in this Constitution, shall be elected by the people or appointed as may be provided by law; and all municipal and local officers shall be elected or appointed as provided by law; and no officer shall have his salary, compensation, or emoluments increased during the period for which he was elected, nor shall any law be passed extending the term of any officer beyond the term for which such officer was elected, except as provided in Section 3 Article 6 of this Constitution.

Sec. 21. That Section 1 of Article 16 of said Constitution be amended to read as follows:

Section 1. Any amendment or amendments to this Constitution may be proposed at a regular session in either branch of the General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals; and it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election, and if a majority of said electors voting on such amendment or amendments shall ratify the same, such amendment or amendments shall become a part of the Constitution; but if a majority of said electors shall not ratify the same, such amendment or amendments shall be defeated. Any political party may declare for or against any amendment, in convention, and have such declaration made a part of its ticket for submission to the electors.

No new Constitution shall be submitted to the people of this State for ratification and adoption or rejection, until by virtue

of an act of the General Assembly a majority of the legal voters of the State have declared in favor of a constitutional convention; when and whereupon such constitutional convention shall be convened in such manner as the General Assembly may provide; but any Constitution by such convention proposed shall be submitted to the voters of this State for ratification or rejection at a general or special election as may be ordered by the General Assembly.

Sec. 22. That Section 2 of Article 16 of said Constitution be amended to read as follows:

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors may vote for or against each of such amendments separately.

Sec. 23. Each of the above proposed amendments to the Constitution of the State is proposed and agreed to as a separate proposition, and each of them is submitted to the next General Assembly as a separate proposition.

Sec. 24. The next General Assembly shall submit to the electors of the State as a separate proposition such of said proposed amendments as it may agree to.

#### **527. Taxation (February 4, 1913).**

On February 4, Senator Bader S. Hunt, a Republican, presented the following resolution proposing an amendment to the Constitution relative to taxation. The resolution was reported favorably but no further action was taken.

*[Senate Journal, Sixty-eighth Session, 656.]*

A joint resolution to amend Section 1 of Article 10 of the Constitution of the State of Indiana.

#### **528. Woman Suffrage (March 3, 1913).**

On March 3, Senator Harry E. Grube, a Democrat, introduced a resolution proposing to amend the Constitution by extending the right of suffrage to women. The resolution was referred to the Committee on Constitutional Revision and was never reported back to the Senate.

*[Senate Journal, Sixty-eighth Session, 1542.]*

A joint resolution to amend Section 2 of Article 2 of the Constitution of the State of Indiana.

#### **529. Calling a Constitutional Convention.**

During the session of 1913, attempts were made by representatives of all three parties to provide for the calling of a constitutional convention. The Republican measure was introduced in the Senate on January 15, by Mr.

Will R. Wood, and referred to the Committee on Constitutional Revision. On March 10, the bill was returned to the Senate without recommendation and was considered no further.

#### REPUBLICAN MEASURES.

[*Senate Journal, Sixty-eighth Session, 77.*]

Senate bill No. 57. A bill for an act to provide for the election to and assembling of a convention to revise, alter or amend the Constitution of the State of Indiana.

A similar Republican measure was introduced in the House on February 13, by Mr. Charles Weidler and referred to the Committee on Elections from which it never emerged.

[*House Journal, Sixty-eighth Session, 872.*]

House bill No. 530. A bill for an act to provide for the election to and assembling of a convention to form a new constitution for the State of Indiana.

#### PROGRESSIVE MEASURE.

The Progressive measure was introduced in the Senate on January 15 by Mr. Frank N. Gavit and referred to the Committee on Constitutional Revision, from which it was reported on March 10, without recommendation. No further action was taken on the measure.

[*Senate Journal, Sixty-eighth Session, 78.*]

Senate bill No. 63. A bill for an act to provide for the assembling of a constitutional convention.

#### UNSUCCESSFUL DEMOCRATIC MEASURES.

All told four Democratic measures were introduced. Three of these were introduced in the Senate and one in the House. The House bill was introduced on January 16 by Mr. Nathan B. Combs and referred to the Committee on Judiciary A, from which it was reported favorably on January 21 and the bill was ordered printed and laid on the desks of the members. No further action was taken.

[*House Journal, Sixty-eighth Session, 121.*]

House bill No. 118. A bill for an act concerning a constitutional convention.

Of the three Senate bills, the first was introduced by Mr. Harry E. Grube on January 15 and was referred to the Committee on Constitutional Revision, from which it was reported without recommendation on March 10, and no further action was taken.

[*Senate Journal, Sixty-eighth Session, 77.*]

Senate bill No. 60. A bill for an act concerning a constitutional convention.

The other two bills were presented by Senator Evan B. Stotsenburg. The first of these measures was presented on January 23 and was referred to the Committee on Revision of the Constitution from which it was reported on March 10, without recommendation and no further action was had.

[*Senate Journal, Sixty-eighth Session, 158.*]

Senate bill No. 159. A bill for an act to provide for taking the census of the qualified voters of the State of Indiana on a call for a constitutional convention.

#### SENATOR WOOD'S PROPOSED SUBSTITUTE BILL.

The bill which was finally enacted into law was introduced by Senator Evan B. Stotsenburg on February 12. On February 21, the bill was amended to provide that the convention should not remain in session more than 120 days, Sundays excluded. Senator Will R. Wood moved to strike out the Stotsenburg bill and insert in lieu thereof a new bill as follows. This motion did not prevail.

[*Senate Journal, Sixty-eighth Session, 1140.*]

MR. PRESIDENT:

I move that Senate bill No. 388 be recommitted to a committee of one, its author, with specific instructions to amend by striking out all of said bill after the enacting clause, and by inserting in lieu thereof the following:

Section 1. That an election shall be held by the qualified voters of the State of Indiana on the second Monday in September, 1913, at which shall be elected delegates who shall constitute a convention for the purpose of forming a new Constitution for the State of Indiana, and which new Constitution shall be submitted to the vote of the people of the State of Indiana, to be by them ratified or rejected at such time and in such manner as the convention may determine.

Sec. 2. The convention shall consist of a number of delegates equal to the number of the members composing the House of Representatives of the General Assembly and shall be apportioned in the same manner that members of the House of Representatives of the General Assembly are apportioned. The election shall be proclaimed by the sheriffs of the several counties, and shall in all respects be conducted, the returns thereof made and the result certified as is provided by law in case of the election of representa-

tives to the General Assembly. All persons entitled to vote for delegates shall be eligible to be elected a delegate to the convention.

Sec. 3. The election shall, in all respects, be conducted, held, canvassed and certified in manner and form as now prescribed by law for the election of members of the General Assembly, and all laws regulating elections and prescribing penalties for violation, so far as the same are applicable, shall be in force in said election of delegates the same as are provided by law in the case of election of members of the General Assembly. The election officials shall be the same as at a general election and shall have the same powers and receive the same compensation as at a general election.

Sec. 4. Candidates for members of the constitutional convention shall be nominated by nominating petitions only.

Sec. 5. Any qualified elector may be nominated for member of the constitutional convention for his representative district, upon a petition in writing filed with the Secretary of State not less than thirty nor more than sixty days prior to the day of election. Such petition shall be signed by not less than one per cent of the qualified voters of the county, based on the number of those who voted for Governor at the last general election.

Sec. 6. Such petitions shall contain a provision to the effect that each signer thereto pledges himself to support and vote for the candidate or candidates whose nomination is therein requested. Each elector signing a petition shall add to his signature his place of residence in his own handwriting (unless he cannot write and his signature is made by mark), which shall include street and number when there is a street and number. No elector may sign his name to more than one nominating petition for each office to be filled; and where an elector has signed his name to more than one petition, his name shall not be counted on any of the petitions. Nothing herein shall be construed, however, to prevent more than one petition signed by one person up to the number of members of the convention to which his representative district is entitled.

Sec. 7. Each petition may consist of more than one paper but each separate sheet shall have at the top a statement indicating its purport and shall be sworn to by at least two signers that it is bona fide in every respect to the best of their knowledge and the certificates of such oaths shall be annexed.

Sec. 8. Besides containing the names of the candidates, all petitions shall specify as to each candidate:

1. That he is a candidate for the office of member of the con-



stitutional convention for the county in which the signatures are obtained.

2. His place of residence, with street and number thereof, if any.

3. A declaration by the candidate that he will qualify if elected.

Sec. 9. When filed, the petition shall be preserved and be open under proper regulations to public inspection, and if they are in entire conformity with the provisions of this act and all other provisions of law not inconsistent herewith, they shall be deemed to be valid unless objection thereto is duly made in writing within five days after the filing thereof. Such objections or other questions arising in the course of the nomination of said candidate, shall be considered by the Secretary of State, and his decision shall be final.

Sec. 10. The names of candidates for members of the constitutional convention, nominated as provided herein, shall be placed on one independent and separate ballot, without any emblem or designation.

Sec. 11. The ballot for members of the constitutional convention shall be prepared by the Secretary of State as now provided by law for ballots for general elections. The whole number of ballots to be printed for the county shall be divided by the number of candidates for members of constitutional convention, and the quotient so obtained shall be the number of ballots in each series of ballots to be printed. The names of candidates shall be arranged in alphabetical order and the first series of ballots printed. The first name shall be placed last in the next series printed, and the process shall be repeated in the same manner until each name shall have been first. These ballots shall then be combined in tablets with no two of the same order of names together, except where there is but one candidate.

Sec. 12. The person or persons in each representative district equal to the number of delegates to which a representative district is entitled, receiving the highest number of votes shall be declared elected delegates to the constitutional convention.

Sec. 13. Any vacancy occurring among the delegates by death, resignation or otherwise, shall be filled in the manner provided by law for filling a vacancy in the office of representative.

Sec. 14. Delegates who shall be elected as aforesaid shall assemble in convention at the capitol in the city of Indianapolis

on the first Monday in December next, and organize by electing a president and all other necessary officers.

It shall be the duty of the Secretary of State to attend the convention on the convening thereof; to call over the list of districts and counties; receive the credentials of delegates, and generally, to perform the duties of the organization that are usually discharged by the officer whose duty it is by law to attend to the organization of the House of Representatives of this State at the commencement of its session; and should the Secretary of State fail to attend in person or by deputy by 10 o'clock a. m. on said day, then it shall be the duty of the Auditor of State to attend for such purpose.

The superintendent of public buildings and grounds shall properly prepare the hall of the House of Representatives for the use of said convention.

Sec. 15. Members of said convention shall enjoy the same privileges and immunities in going to, attending upon, and returning from said convention that the members elected to and attending on the General Assembly are now entitled to by law.

Said convention shall be the judge of the election and qualifications of its members; it shall possess the same power to adopt rules, expel a member for disorderly conduct, and punish contempt, that are now exercised by the House of Representatives of the General Assembly in similar cases. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and take measures to compel the attendance of absent members. The members and officers of said convention shall be entitled to the use of the legislative reference department of the State library in the same manner and upon the same conditions that members of the General Assembly are allowed the use thereof.

Sec. 16. The members of the convention shall receive the same mileage and per diem while attending upon the sitting of said convention as members of the General Assembly are allowed by law, and all the officers, employes and attendants shall be paid the same compensation as like officers, employes and attendants of the General Assembly of this State are paid for similar services; all of which expenses together with such other expenses as may be incurred by said convention, shall be certified by the President of the Convention, and shall be paid by the Treasurer of State out of any fund not otherwise appropriated, on the warrant of the Auditor of State.

Sec. 17. The Secretary of State and other State officers shall furnish said convention with all such papers, statements, statistical information, copies of records of public documents in their possession as the convention may order or require; and it shall be the duty of the proper officer or officers to furnish the members of said convention with all stationery as is usually furnished the General Assembly while in session, which shall be paid for on the certificate of the President, in like manner as provided in the preceding section.

Sec. 18. It shall be the duty of every State, county and municipal officer in the State, to transmit without delay any information at his command which the convention, by resolution or otherwise, may require of him; and if any officer shall fail or refuse to comply with any requirement of this section, he shall forfeit and pay the sum of three hundred dollars (\$300) to be recovered in any court of competent jurisdiction, in the name of the State of Indiana, by the prosecuting attorney of the proper county, whose duty it shall be to prosecute all cases of delinquency under this section coming to his knowledge or of which he shall be informed. The legislative reference department of the State library shall compile an annotated compilation of the constitutions of the various States, which shall be published by the commissioners of public printing, binding and stationery, for the use of the convention. The department shall also compile such other data relating to the constitutional history of Indiana and of the other States and counties as may be useful for the work of the convention, and such part thereof as may be deemed advisable shall be printed for the use of the convention.

Sec. 19. It shall be the duty of the Secretary of State to immediately cause five thousand copies of this act to be printed and distributed to the clerks of the circuit courts of the State of Indiana in proportion to the population of the several counties; said clerks shall cause the auditor of the county to deliver one or more of said copies to each inspector of elections in said county and the clerk shall certify to the sheriff that the delegates are to be elected and the sheriff shall give notice of said election in the same manner as now provided by law as to the election of members of the General Assembly of this State.

#### SUCCESSFUL DEMOCRATIC MEASURE.

The bill then passed the Senate by a vote of 32-5. In the House the bill was referred to the Committee on Judiciary A, which recommended that the

bill should be amended by striking out the proviso that the Convention should sit not to exceed 120 days and to insert in lieu thereof the proviso that the Convention should sit not to exceed 180 days, Sundays excepted. The report was concurred in and the bill passed as amended on March 6 by a vote of 66-8. On March 7, the Senate concurred in the House amendments.

[*Laws, 1913, 812.*]

## CHAPTER 304.

AN ACT to provide for taking the sense of the qualified electors of the State of Indiana on a call for a constitutional convention, providing how such election shall be conducted and also providing that in the event a majority of such electors vote in favor of calling a constitutional convention, that such a convention be held in the city of Indianapolis on the first Monday in November, 1915, providing for the time, manner, apportionment, number and election of delegates to such convention and the powers and duties of such convention and other matters incident thereto. See Appendix XII.

### CONSTITUTIONAL CONVENTION—SENSE OF VOTERS.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the inspectors of elections in the several townships and voting precincts within each county in this State at the regular election to be held in November, 1914, to open a poll in which shall be entered all the votes given for or against the calling of a convention to alter, revise or amend the Constitution of the State of Indiana, or to formulate a new Constitution if deemed advisable.

### LEGAL VOTERS.

Sec. 2. Every qualified voter in the State of Indiana may, at said election, vote for or against the calling of a convention for the purpose mentioned in the first section of this act.

### BALLOTS.

Sec. 3. The county board of election commissioners shall furnish to each inspector of such election the same number of ballots to be used by the voters in determining whether such convention shall be called, as is furnished of county ballots. Said ballots shall be in the following form, to wit:

Are you in favor of a constitutional convention in the year 1915.

☐ Yes.

☐ No.



Such ballot shall be printed on plain white paper four inches square. The expense of printing said ballots and furnishing the ballots, boxes and supplies hereinafter mentioned shall be paid by the respective boards of commissioners of the several counties of the State as other expenses of elections are paid. Each voter shall indicate his desire as to the calling of such convention by marking said ballot in the manner following, viz: If such voter is in favor of calling a constitutional convention he shall make a mark thus "X" in the square in front of the word "Yes," if he is opposed he shall make a mark thus "X" in the square in front of the word "No." Such ballots after being marked by the voter shall be deposited in a separate box to be provided for the purpose. Whenever an elector offers to vote at such election one of said ballots shall be handed such voter by the judge of election.

#### CANVASS OF VOTE.

Sec. 4. At the close of the polls it is hereby made the duty of the several boards of election to canvass on the county tally sheet the ballots cast upon said question, and the number of votes given for or against the calling such convention, and such vote shall be canvassed by the county board of canvassers the same as the votes for candidates are canvassed by such board, certified to the clerks of the circuit court respectively, upon certificates to be furnished such inspectors and board of canvassers, with the other election supplies.

#### COUNTY CLERKS—MAKE RETURNS.

Sec. 5. It shall be the duty of the clerk of the circuit court throughout the State to certify and make return of all votes given for or against the calling of such convention, and also all the votes that were given at such election, to the Secretary of State in the same way and manner that votes for Governor are required by law to be certified, and such clerks shall be subject to like penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly all the returns received by him pursuant to the provisions of this act, and also to certify the total vote at said election and the vote for and against said question to the Governor.

#### NOTICE OF ELECTION.

Sec. 6. In the notice of said general election to be held in



November, 1914, shall be included a notice to the electors that the polls will be open for the purpose specified in this act.

#### DECISION OF VOTERS—PROCLAMATION.

Sec. 7. If a majority of the electors voting at such election shall be in favor of calling a constitutional convention, then a constitutional convention shall be held in the State of Indiana under the provisions of this act, and if such proposition shall so carry, it shall be the duty of the Governor to issue his proclamation that said proposition has carried.

#### ELECTION OF DELEGATES—SPECIAL ELECTION.

Sec. 8. If said question shall carry, then and in that event a special election shall be held by the qualified voters of the State of Indiana on the first Tuesday after the first Monday in March, 1915, at which shall be elected delegates who shall constitute a convention for the purpose of making such amendments, alterations, and changes in, the present Constitution of the State of Indiana, or the making of an entirely new Constitution for the State of Indiana, as such convention may deem proper, and which new Constitution or amendments to the present Constitution shall be submitted to the vote of the people of the State of Indiana to be by them ratified or rejected.

#### NUMBER OF DELEGATES—APPORTIONMENT.

Sec. 9. The convention shall consist of a number of delegates equal to the whole number of the members composing the Senate and House of Representatives of this State, and shall be apportioned in the same manner that members of the General Assembly are apportioned at the time of such election; they shall be chosen in the same method and by the same electors as choose the General Assembly, and all persons entitled to vote for delegates shall be eligible to be elected to a seat in the convention.

#### GENERAL ELECTION LAWS TO GOVERN.

Sec. 10. That said election shall, in all respects, be conducted, held, canvassed and certified in manner and form as now prescribed by law for the election of members of the General Assembly, and all laws regulating elections and prescribing penalties for the violation thereof, so far as the same are applicable, shall be in force

in said election of delegates the same as are provided by law in the case of election of members of the General Assembly.

#### CONTEST—HOW DECIDED.

Sec. 11. In case of a contest or dispute in the election of delegates to said convention, the contesting candidate or other person contesting said election shall pursue the same course and be governed by the same rules and regulations as are now provided by law in case of contested or disputed election of senators or representatives of the General Assembly of this State.

#### CANDIDATES—NON-PARTISAN.

Sec. 12. No political party shall be permitted to nominate candidates for delegates to such convention. All nominations for delegates to such convention shall be by petition and any voter shall be permitted to become a candidate as such delegate by filing a petition to that effect, signed by one hundred voters of the district in which he proposes to be a candidate. In all other respects such petition shall be governed by the provisions of the general election governing petitions for nomination of candidates to the General Assembly. All candidates for delegates to said convention from the same district shall be printed in the same column and in alphabetical order according to the surnames of the candidates.

#### DATE OF CONVENTION—ORGANIZATION.

Sec. 13. Delegates, who shall be elected as aforesaid, shall assemble in convention at the capitol in the city of Indianapolis on the first Monday in May, 1915, at 12 o'clock noon and organize by electing a president and all other necessary officers. It shall be the duty of the Secretary of State to attend the convention on the convening thereof; to call over the lists of districts and counties; receive the credentials of delegates, and, generally to perform the duties of the organization that are usually discharged by the officer whose duty it is by law to attend to the organization of the House of Representatives of this State at the commencement of its session; and should the Secretary of State fail to attend in person or by deputy at said hour on said day, then it shall be the duty of the Auditor of State to attend for such purpose. The custodian of the State house shall properly prepare the hall of the House of Representatives for the use of said convention.

## OATH OF OFFICE.

Sec. 14. Delegates, before entering upon the discharge of their duties, shall each be duly sworn or affirmed to support the Constitution of the United States, the Constitution of the State of Indiana, and honestly and faithfully perform the duties of said office; such oath or affirmation may be administered to them by any judge of the Supreme or Appellate court.

## POWERS OF CONVENTION.

Sec. 15. Members of said convention shall enjoy the same privileges and immunities in going to, attending upon, and returning from said convention that the members elected to and attending on the General Assembly are now entitled by law. Said convention shall be the judge of the election and qualification of its members; it shall possess the same power to adopt rules, expel a member for disorderly conduct, and punish contempt, that are now exercised by the House of Representatives of the General Assembly in similar cases. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and take measures to compel the attendance of absent members.

The members and officers of said convention shall be entitled to the use of the State library in the same manner and upon the same conditions that members of the General Assembly are allowed the use thereof.

## VACANCY—HOW FILLED—PER DIEM.

Sec. 16. In the case of a death or resignation of any member of the convention, the Governor of this State shall issue an order for a special election to be held to fill such vacancy in the same manner as now prescribed by law for supplying vacancies in the General Assembly of the State. The members of the convention shall receive the same mileage while attending upon the sitting of said convention as members of the General Assembly are allowed by law and they shall receive a per diem of ten dollars per day, and all the officers, employes and attendants shall be paid the same compensation as like officers, employes and attendants of the General Assembly of this State are paid for similar services; all of which expenses, together with such other expenses as may be incurred by said convention, shall be certified by the President of the convention, and shall be paid by the Treasurer of State out of any

fund not otherwise appropriated, on the warrant of the Auditor of State. Said convention shall not remain in session longer than one hundred and eighty (180) days, Sundays excepted.

#### RECORDS AND DOCUMENTS—CONVENTION ENTITLED TO.

Sec. 17. The Secretary of State and all other State officers shall furnish said convention with all such papers, statements, statistical information, copies of records or public documents in their possession as the convention may order or require; and it shall be the duty of the proper officer or officers to furnish the members of said convention with all stationery as is usually furnished the General Assembly while in session, which shall be paid for on the certificate of the President, in like manner as provided in the preceding section.

#### ENROLLED CONSTITUTION—WHERE FILED.

Sec. 18. The enrolled copy of the Constitution or amendments adopted by said convention, and the proceedings of said convention, shall be deposited, by the President and Secretary thereof in the office of the Secretary of State, who shall file the same, and cause said Constitution to be entered of record in his office; and said convention may submit one or more amendments or one or more sections of the proposed Constitution, as distinct propositions, to be voted upon by the people separately or together, as to the convention seems expedient. Said convention shall have power to fix and prescribe the time, form and manner of submitting any amendments or new Constitution to the electors of the State for their adoption or rejection and for such purpose said convention is given power and authority to call a special election of the electors.

#### DUTIES OF GOVERNOR AND SECRETARY OF STATE.

Sec. 19. It shall be the duty of the Secretary of State, so soon as such enrolled proposed Constitution or amendments is [are] recorded in his office, to deliver to the Governor of the State, a certified copy thereof, who shall, on the meeting of the General Assembly of this State at its next session, following such convention, lay the same before them; and it shall be the duty of said General Assembly if such constitutional convention has failed to submit its work to the people for adoption or rejection, to pass all laws necessary and proper for submitting the same to the qualified

voters for their approval or rejection; and also for organizing the government under the amended Constitution, in case it shall be adopted and ratified by a majority of the voters voting thereon, at the election to be held for that purpose. It shall be the duty of the Secretary of State to immediately cause ten thousand copies of this act to be printed and distributed to the clerks of the circuit courts of the State of Indiana in proportion to the population of the several counties; said clerks shall cause the auditor of the county to deliver one or more of said copies to each inspector of elections in said county, and the clerks shall certify to the sheriff that the delegates are to be elected and the sheriff shall give notice of said election in the same manner as now provided by law as to the election of members of the General Assembly of this State.

#### ELECTION COMMISSIONERS—DUTIES.

Sec. 20. All ballots and blank forms for the holding of such election and all other forms and blanks that will be necessary to carry out the provisions of this act shall be prepared and furnished in the same way that like forms, blanks, etc., are prepared and furnished for elections and for the use of the General Assembly, by the proper officers, and shall be paid for in the same manner. All election officers shall receive the same compensation as now provided by law for similar services rendered at general elections.

[S. 388. Approved March 15, 1913.]

#### 530. *In re Boswell*—Lawyers Amendment Held not Legally Adopted (February 21, 1913).

As has been shown, the lawyers amendment was submitted to the qualified voters for ratification at the general election of 1910. The total number of votes cast at that election was 627,133; the total vote cast in favor of the ratification of the amendment was 60,357; the total vote cast against the ratification was 18,494. Obviously, the amendment had not received the sanction of a majority of the votes cast at the election. Sometime after the election, Charles W. Boswell applied for admission to practice law in the Marion County Circuit Court and was refused by Judge Charles Remster "solely upon the assumption that the proposed amendment which was submitted to the electors of the State in 1910 had been carried by their votes into the organic law of the State . . .". The sole question before the court was whether this amendment had been adopted, i.e., whether "a majority of those voting on a proposed amendment shall be sufficient to carry it into the organic law." The court determined two points conclusively: (1) an amendment to the Constitution is not adopted unless it is ratified by a majority of the electors of the State; this conclusion follows both the Swift and the Denny cases; obviously,



the "electors of the state" were those who actually voted at the election; (2) since the amendment did not receive a majority of the votes cast at the election, it was rejected; the legislative duty is discharged with one submission; this conclusion follows the Denny case and subverts the Swift case; (3) manifestly the General Assembly has "the implied power to refuse to resubmit or even to withdraw amendments from further consideration" (See Document No. 525).

((179 Ind. 292, 296, 100 N.E. 833, 834))

After enumerating the points determined in the Swift and Denny cases the court, by Mr. Justice Cox, proceeds:

. . . It may be that irreconcilable differences exist between these two cases in other particulars, but they do agree in holding that it requires the affirmative vote of the electors of the State to amend the Constitution. To that holding we adhere. It has been considered by this court in the cases cited that the provision is too plain to carry more than one meaning, and that the question in any case is not one of construction but of evidence to determine the number of electors in the State and whether an amendment has received a majority of them. No difficulty in that respect confronts us in this case. As we have seen, the same ballots which contained this amendment also carried on them the names of candidates for all of the State offices to be filled at that election. At the head of them were the names of opposing candidates for Secretary of State and for all of the several candidates for that office there was cast a total of 627,133 ballots. It is thus made manifest that there were at least that many electors in the State qualified to vote on the very day, at the very time and at the same election when this amendment was voted upon, and as it received the affirmative vote of so small a proportion of the ballots actually cast, it is at once obvious that it was not ratified by a majority of the electors of the State.

In *State v. Swift*, *supra*, it was held by the opinion of the court that the amendment in question had been neither ratified nor rejected, and it was said that no reason was apparent why it might not be resubmitted to the electors of the State by the General Assembly "under an amended act such as experience may prove to be sufficient to present the question to the courts, if it ever should arise again." The General Assembly of 1881 acted upon this suggestion and resubmitted the amendment involved in that case at a special election.

The proposed amendment now before us, known as the "Lawyers Amendment" has been before the legislature for many years

and has been three times submitted to the people for definitive action. It has always received the approval of the General Assembly as required by Article 16 of the Constitution and each time that it has been submitted to the electors of the State a majority of those voting on the question of amendment has been cast in favor of the ratification of it; but it has never received a majority of the qualified electors of the State as measured by the number of those voting at the elections at which it was submitted. It is assumed that the statement in *State v. Swift*, *supra*, that the amendment was neither adopted or rejected, and that there might be a resubmission when taken together with the rule requiring a majority of the electors of the State for ratification, serves to keep this amendment awaiting the action "of the electors" within the meaning of Section 2 of Article 16 which provides that "while an amendment or amendments which shall have been agreed upon by one General Assembly shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed." It is further assumed that this "automatically locks" the Constitution against needed amendments, and it is contended that we should declare the true rule to be, under Article 16, that only a majority of those voting upon a proposed amendment at a general election shall be sufficient to ratify it. We have had occasion lately to show that the Constitution is not locked by this amendment, or by pursuing constitutional ways for its amendment, or, if it be locked that the people have in their possession the key that unlocks it. If it be locked we have no authority or inclination to break the lock which the Constitution itself provides to open a more expeditious or an easier way of amendment. This court has ever refused to bend constitutional provisions by construction to serve convenience.

Moreover it would seem that what was said in *State v. Swift*, *supra*, would only make an amendment which had received a majority of all of the votes cast for and against it but not a majority of the electors of the State, an obstruction to the proposal of other amendments, if the legislature chose to treat it as such. It would not be "awaiting the action of the electors" unless the legislature had taken the proper action to resubmit. It is true that Article 16 makes it the duty of the General Assembly to submit proposed amendments which have been approved by two consecutive General Assemblies, but that constitutional duty is discharged when there has been one submission. The provisions of Article 16 do not specifically require a resubmission. If the legis-

lature has the power, it is implied. If it has this implied power, it is difficult to see why it has not also the implied power to refuse to resubmit or even to withdraw amendments from further consideration. There is nothing to indicate an intention to require resubmission over and over again until definite action is secured by ratification or positive rejection by a majority against the amendment.

However, the assumption that the declaration in *State v. Swift*, *supra*, that an amendment which received a majority of the total votes cast for and against, but not a majority of the electors of the State, was neither ratified nor rejected, controls the situation, is not permissible.

In the Denny case, which considered the question whether this same "lawyers amendment" had been ratified at the general election of 1900 at which it was first submitted, it appeared that the amendment had received a majority of all of the votes cast on the question but not a majority of the votes cast at the election, and it was held that it had not only not been ratified but had been defeated and rejected. To that conclusion, after due consideration, we adhere and hold that the amendment before us was rejected by the vote at the general election in 1910. The amendment having been rejected the way is clear and open for the proposal of such amendments to the Constitution as the General Assembly may feel that the people demand.

The judgment is reversed with instructions to the trial court to restate its conclusions of law in accordance with this opinion.

### THE SIXTY-NINTH GENERAL ASSEMBLY (1915).

The Democrats still retained a large majority in the 69th session of 1915. There were 41 Democrats, 8 Republicans and 1 Progressive in the Senate, and 60 Democrats, 39 Republicans and 1 Progressive in the House. The proposition to call a constitutional convention had been overwhelmingly defeated at the general election of 1914 but the Stotsenburg amendments were still pending. Very little attention was given to constitutional measures; the pending amendments were rejected and only two proposed amendments were introduced. An unsuccessful attempt was made to re-submit the call for a constitutional convention. The session finally adjourned without adopting any amendments. Several measures were considered extending fuller political rights and the partial franchise to women. Senate bill No. 105, designed to make women over twenty-one years of age and possessing the necessary residential qualifications of voters eligible to the office of school trustee and school commissioners was reported unfavorably by the committee and the report was concurred in. Senate bill No. 359, proposing to grant to women the right to vote for presidential electors and other officers

created by the legislature, and to vote on questions submitted to the people was passed by the Senate by a vote of 37-3. In the House, the bill was referred to the Committee on Judiciary B, where it was permitted to expire. An attempt to require the committee to report was lost by a vote of 53-41.\* Senate bill No. 412, containing substantially the same provisions as the foregoing bill, passed the Senate by a vote of 30-14, was reconsidered and repassed by a vote of 36-8, but was not acted upon by the House. House bill No. 489, identical with the two foregoing bills, was advanced no further than engrossment. While these bills were pending the following communication was presented in the Senate.

### 531. Equal Suffrage Petition.

*[Senate Journal, Sixty-ninth Session, 739.]*

The following communication was read to the Senate:

Inasmuch as we the members of the following organization of Bluffton believe that most men and women favor enfranchisement of women, and that future good government demands equal suffrage, we most respectfully request that our legislature act favorably on the Partial Suffrage Bill and other bills endorsed by the Legislative Council of Women.

Mrs. W. H. Eichhorn, President Foltz Club.

Mrs. D. A. Walmer, President Wells Co. W. C. T. U.

Miss Florence Tait Walmer, President Reformed C. E. Society.

O. R. McKay, Pastor First Baptist Church.

Mrs. J. E. Reynolds, President Women's Federation of Clubs.

Mrs. R. F. Cummins, President Round Table Club.

Mrs. H. E. Tribolet, Secretary W. P. Parent Teachers' Circle.

Mrs. W. S. Smith, President Delphi Club.

Mrs. J. B. Poffenberger, Organized Charity Ex.

Lettie Miller, W. W. Crescent Chapter No. 48.

Mrs. H. A. McTanen, President of Park Parent Teachers' Circle.

A concurrent resolution was presented in the House requesting our representatives in Congress to vote for the suffrage amendment then pending in Congress, but no definite action was taken. Two bills, providing a modified form of the initiative by taking the sense of the qualified electors on questions submitted to them at general elections and securing the pledges of candidates on questions of public policy, were introduced. House bill No. 455 was indefinitely postponed, and Senate bill No. 324 passed the Senate by a vote of 34-0 but was not acted upon by the House.

\*((A motion to table the motion to require a committee report passed 53-41.))



**532. Governor Ralston Recommends Adoption of Amendments (January 7, 1915).**

In his message to the General Assembly, delivered on January 7, Governor Ralston expressed the conviction that it was the duty of the General Assembly to take action on the pending amendments and either adopt or reject them. He recommended the proposed amendments restricting the right of suffrage and authorizing the Governor to veto items in an appropriation bill, and expressed his disapprobation of the amendment authorizing the General Assembly to classify property for taxation.

*[House Journal, Sixty-ninth Session, 49.]*

## CONSTITUTIONAL AMENDMENTS.

In view of the fact that the proposal to call a constitutional convention at the last general election failed, I deem it proper that I should ask your attention to the proposed amendments to the State Constitution, that were agreed to by both branches of the Sixty-eighth General Assembly. These proposed amendments number in all twenty-two, and it will be legal for you to take action upon them. It is really your duty to act thereon and either to approve them or reject them. Each proposed amendment may be acted upon separately.

These proposed amendments are published in pamphlet form, in parallel columns with the section of the Constitution sought to be amended and are numbered from one to twenty-two inclusive.

## NUMBER TWO AND NUMBER FIVE.

Number two seeks to safeguard the ballot against those in whose citizenship there is no element of permanency. A voter who has not resided a year in Indiana should not have a right to a voice in the government of this State. Too often in the past transitory, not to say migratory, individuals have aided materially by their votes in defeating the will of the substantial and legal citizenship of our commonwealth. This wrong has had a large influence in corrupting our elections and in lowering the ideals of our people. This proposed amendment will permit wise legislation on the subject of registration.

It frequently happens that a particularly objectionable provision finds its way into what is otherwise a splendid law, but under our present Constitution the objectionable provision cannot be vetoed or stricken down by the chief executive without condemning the entire act. The proposed amendment number five



will give the Governor the right to approve the good and reject the bad in any legislative bill presented to him for his approval.

Much discussion has taken place in this State during the past two years, as to the importance of amending Section 1 of Article 10 of our State Constitution, which fixes the basis for taxation in Indiana. Possibly I am obtuse on this subject. Whether this is true or not, it is certainly true that I do not assume to be an expert on the subject of taxation, and this may account, in part at least, for my having been unable to persuade myself that the attacks made upon this provision of our Constitution are sound.

This section, you will observe, provides for a system of taxation that is "uniform and equal." I like these words. They appeal to a man's innate sense of justice, and it would seem that they should have a permanent place in a government founded in a love for justice, and especially it seems they are most appropriate on which to rest that greatest function of government, the power to lay and collect taxes. But it is argued that we do not now have uniformity and equality in the laying and collecting of taxes and I concede that we do not; but the fault is with the public officials sworn to obey and enforce the law and not with the people's supreme law.

The proposed amendment of this section, designated as number sixteen, eliminates the words "uniform and equal", both as applied to the basis on which assessments shall be made and the rate of taxes levied thereon; and then it adds this significant provision:

"In enacting laws for the assessment of property for taxation the General Assembly shall have the right to classify different kinds of property, and to provide for a different manner and basis of assessment and rate of taxation for each class."

Under this provision of the proposed amendment there is nothing to prevent a legislature from assessing bank stock and brewery stock at fifty cents on the dollar of its true value and the grain and herds of the farm at their full true value. Every legislature would be besieged to lower the rate on certain classes of property and to raise it on others, and at every session of our General Assembly there would be an alignment of interests for a new classification and a "different manner and basis of assessment and taxation," not unlike that the country witnesses at every revision of the tariff, with the result that often the victory would be with the strong.

I think it is conceded that any proposed change in the organic

law of a free people challenges the most serious attention of those who are required to take the initiatory steps looking to the change. There is a very striking and fundamental difference between a constitution and a statutory law. The former represents the deliberate, sovereign will and gives stability and character to the government. It is organic and therefore continuous, and is not subject to being added to or taken from by every fad or ism that sweeps the land. It shields personal liberty and preserves property rights when blind passion dethrones reason; and it does this by fixing barriers beyond which legislatures cannot go. It is impervious to all attacks except those by the sovereign will. It is the embodiment of the sovereign will constructed on fundamental principles.

On the other hand, statutory laws are temporary instruments of government, and are enacted to meet public demands for the operation of the people's government within the sphere fixed by the people's organic law. The work of one legislature may be undone by a subsequent legislature. Legislation has in it the element of expediency. With these distinctions kept in mind, it will be easier to understand and appreciate the great significance that necessarily attends the changing or modification of the Constitution of a sovereign state. Much more can be said in condemnation of this proposed amendment, but enough has been said to justify me in declining to endorse it.

### 533. The Stotsenburg Amendments.

The pending Stotsenburg Amendments were embodied in a resolution and introduced in the Senate on January 19 by Senator Fred Van Nuys in the following form.

FORM IN WHICH STOTSENBURG AMENDMENTS WERE ORIGINALLY  
PRESENTED (JANUARY 19, 1915).

[*Senate Journal, Sixty-ninth Session, 107.*]

Joint Senate resolution No. 1.

MR. PRESIDENT:

I offer the following resolution and move its adoption:

WHEREAS, The Sixty-eighth General Assembly of the State of Indiana agreed to and referred to the present General Assembly the proposed amendments to the Constitution of the State hereinafter set out in full, and,

WHEREAS, It is the sense of the present General Assembly that

said amendments should be agreed to, and by it referred to the people,

*Therefore, be it resolved, By the Sixty-ninth General Assembly of the State of Indiana, That the amendments to the Constitution of the State of Indiana, embodied in and set out in the following resolution, and heretofore agreed to by the Sixty-eighth General Assembly be and the same are hereby agreed to by the Sixty-ninth General Assembly of the State of Indiana, as separate propositions and so referred to the people of the State, viz:*

#### SENATE JOINT RESOLUTION NO. 2.

A joint resolution proposing and agreeing to the amendment of Section 12 of Article 1, Sections 2 and 14 of Article 2, Section 22 of Article 4, Section 14 of Article 5, Sections 1, 2 and 3 of Article 6, Sections 1, 2, 8, 11, 20, and 21 of Article 7, Section 8 of Article 8, Section 1 of Article 10, Section 13 of Article 11, Section 1 of Article 12, Section 1 of Article 15, Sections 1 and 2 of Article 16 of the Constitution of the State of Indiana.

Section 1. That Section 12 of Article 1 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 12. All courts shall be open; and every man, for injury done to him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law for injuries or death occurring in hazardous employment. In enacting such law, the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely and without denial; speedily and without delay.

Sec. 2. That Section 2 of Article 2 of said Constitution be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution every male citizen of the United States of the age of twenty-one years and upward, who shall have resided in the State during the twelve months and in the township sixty days and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside if he shall have been duly registered, if registration is required by law. The General Assembly shall provide by law for the registration of voters; *Provided*, That the General Assembly may exempt from the operation of any registration law, counties having a population of less than fifty thousand inhabitants as shown by the last preceding United States census, and in any county so exempted, registration shall not be a qualification for voting.

Any person who was a voter under the provisions of Section 2 Article 2 of the Constitution of the State of Indiana, as amended March 24, 1881, shall continue to be a voter under this Constitution, if he continues to reside in the State of Indiana, but before any such person shall be permitted to vote he shall have resided in the township sixty days and in the precinct thirty days immediately preceding the election, and be registered, if registration is required by law.

Sec. 3. That Section 14 of Article 2 of said Constitution be amended to read as follows:

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law; *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction by an election to be held for such officers only, at which time no other officer shall be voted for.

Sec. 4. That Section 22 of Article 4 of said Constitution be amended to read as follows:

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of the justices of peace and constables; for the punishment of crimes and misdemeanors; regulating the practice in courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; for laying out, opening, and working on highways, and for the election or appointment of supervisors; vacating roads, town plats, streets, alleys, and public squares; summoning and impaneling grand and petit juries and providing for their compensation; regulating county and township business; regulating the election of county and township officers and their compensation; for the assessment and collection of taxes for State, county, township or road purposes; providing for supporting common schools and for the preservation of school funds, in relation to fees or salaries except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required; in relation to interest on money; providing for opening and conducting the elections of State, county or township officers, and designating the place of voting; providing for the sale of real estate, belonging to minors or other persons laboring under legal disabilities, by executors, adminis-



trators, guardians, or trustees; but the General Assembly may adopt special charters for the different cities of the State.

Sec. 5. That Section 14 of Article 5 of said Constitution be amended to read as follows:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large, upon its Journal, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly. The Governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

Sec. 6. That Section 1 of Article 6 of said Constitution be amended to read as follows:

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, a Treasurer of State, Attorney-General, Reporter of the Supreme Court, and Clerk of the Supreme Court; and all other State officers created by law and to be elected by the people, except Supreme Court judges, shall severally hold their office for four years. They shall perform such duties as may be enjoined by law; and no person other than judges shall be eligible to any one of said offices for more than four years in any period of eight years.

Sec. 7. That Section 2 of Article 6 of said Constitution be amended to read as follows:

Sec. 2. There shall be elected in each county by the voters thereof at the time of holding general elections a clerk of the



circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for four years; and no person shall be eligible to either of said offices for more than four years in any period of eight years.

Sec. 8. That Section 3 of Article 6 of said Constitution be amended to read as follows:

Sec. 3. Such other State, county and township officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law. The term of any elective office shall be four years and no person shall be eligible to the same elective office for more than four years in any period of eight years. In order to permit the election of State, county and township officers at the same election, the General Assembly may provide that the officers in office at the time of the enactment of such a law may serve not longer than two years beyond their term of office.

Sec. 9. That Section 1 of Article 7 of said Constitution be amended to read as follows:

Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts and in such other courts of special, general or appellate jurisdiction as the General Assembly may establish.

Sec. 10. That Section 2 of Article 7 of said Constitution be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than three nor more than twelve judges. For the purpose of deciding cases, such judges may be divided by the General Assembly into classes of not less than three each, and a majority of each class may be authorized to decide cases. If not so divided a majority of such court shall constitute a quorum. The term of office of such judges shall be fixed by the General Assembly, and such term shall not be less than six years nor more than twelve years, and such judges shall be permitted to serve for the term for which they were elected if they so long behave well.

Sec. 11. That Section 8 of Article 7 of said Constitution be amended to read as follows:

Sec. 8. The circuit courts shall each consist of one judge and shall have such civil and criminal jurisdiction as may be prescribed by law. Whenever the General Assembly shall deem it expedient it may create more than one circuit court in the same county, but each of such courts shall have equal and concurrent jurisdiction.

Sec. 12. That Section 11 of Article 7 of said Constitution be amended to read as follows:

Sec. 11. There shall be elected in each judicial circuit by the voters thereof, a prosecuting attorney who shall hold his office for four years, and shall not be eligible to hold said office more than four years in any period of eight years.

Sec. 13. That Section 21 of Article 7 of said Constitution be amended to read as follows:

Sec. 21. The General Assembly may by law provide for the qualification of persons admitted to the practice of the law.

Sec. 14. That Section 8 of Article 8 of said Constitution be amended to read as follows:

Sec. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for four years and whose duties and compensation shall be prescribed by law.

Sec. 15. That Section 1 of Article 10 of said Constitution be amended to read as follows:

Section 1. The General Assembly shall provide by law for the assessment of property for taxation and the raising of revenue thereby; and shall prescribe such regulations as shall secure a just valuation for taxation of all property both real and personal, excepting such only, for municipal, educational, literary, scientific, religious or charitable purposes, as may be specifically exempted by law. In enacting laws for the assessment of property for taxation, the General Assembly shall have the right to classify different kinds of property, and to provide for a different manner and basis of assessment and rate of taxation for each class.

Sec. 16. That Section 13 of Article 11 of said Constitution be amended to read as follows:

Sec. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws. The General Assembly shall have power to amend, or alter the charters of all corporations and voluntary associations.

Sec. 17. That Section 1 of Article 12 of said Constitution be amended to read as follows:

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

Sec. 18. That Section 1 of Article 15 of said Constitution be amended to read as follows:

Section 1. All State officers whose appointments are not otherwise provided for in this Constitution shall be elected by the people or appointed as may be provided by law; and all municipal and local officers shall be elected or appointed as provided by law; and no officer shall have his salary, compensation or emoluments increased during the period for which he was elected, nor shall any law be passed extending the term of any officer beyond the term for which such officer was elected, except as provided in Section 3 of Article 6 of this Constitution.

Sec. 19. That Section 1 of Article 16 of said Constitution be amended to read as follows:

Section 1. Any amendment or amendments to this Constitution may be proposed at a regular session in either branch of the General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals; and it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election, and if a majority of said electors voting on such amendment or amendments shall ratify the same, such amendment or amendments shall become a part of the Constitution, but if a majority of said electors shall not ratify the same, such amendment or amendments shall be defeated. Any political party may declare for or against any amendment in convention, and have such declaration made a part of its ticket for submission to the electors.

No new Constitution shall be submitted to the people of this State for ratification and adoption or rejection, until by virtue of an act of the General Assembly a majority of the legal voters of the State have declared in favor of a constitutional convention; when and whereupon such constitutional convention shall be convened in such manner as the General Assembly may provide; but any Constitution by such convention proposed shall be submitted to the voters of this State for ratification or rejection at a general or special election as may be ordered by the General Assembly.

Sec. 20. That Section 2 of Article 16 of said Constitution be amended to read as follows:

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors may vote for or against each of such amendments separately.

Sec. 21. Said proposed amendment or amendments shall be submitted to the electors of the State as may be provided by law to be passed at the present General Assembly.

AMENDMENT TO STOTSENBURG AMENDMENTS RESOLUTION (FEBRUARY 18, 1915).

The resolution came up for consideration on February 18 and by a vote of 34-1 the constitutional rule was suspended and the resolution was placed upon its passage. At that time, the following resolution, omitted from the resolution as given above, was adopted.

*[Senate Journal, Sixty-ninth Session, 705.]*

Sec. 13. That Section 20 of Article 7 of said Constitution be amended to read as follows:

Sec. 20. The General Assembly shall from time to time take such steps as may be necessary for the codification of the laws of the State, and may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no law for the recall of the judiciary shall ever be passed. The General Assembly shall provide by law for the impeachment of all officers, including judges.

Section 1 of the resolution, amending Section 12 of Article 1 of the Constitution, authorizing the General Assembly to enact a compulsory workman's compensation act was adopted by a vote of 36-6. Section 2, amending Section 2 of Article 2 of the Constitution, prescribing the qualifications for suffrage, and the enactment of a registration law applying to the State generally or any subdivision thereof, was adopted by a vote of 29-13. Section 3, amending Section 14 of Article 2 of the Constitution, providing that judges might be elected at special elections, was adopted by a vote of 30-7. Section 4, amending Section 22 of Article 4 of the Constitution, authorizing the General Assembly to grant special charters to cities, was rejected by a vote of 17-23. Section 5, amending Section 14 of Article 5 of the Constitution, authorizing the Governor to veto items or clauses in appropriation bills, was adopted by a vote of 30-10. Section 6, amending Section 1 of Article 6 of the Constitution, fixing the terms of State officers at four years and making the attorney-general a constitutional officer, was rejected by a vote of 9-31. Section 7, amending Section 2 of Article 6 of the Constitution, fixing the terms of county officers at four years, was rejected by a vote of 20-25. Section 8, amending Section 3 of Article 6 of the Constitution, limiting the eligibility of candidates for office to four years in any term of eight years, was rejected by a vote of 2-42. Section 9, amending Section 1 of Article 7 of the Constitution, authorizing the creation of courts of special, general or appellate jurisdiction, was adopted by a vote of 29-16. Section 10, amending Section 2 of Article 7 of the Constitution, fixing the membership of the Supreme Court at not less than three nor more than twelve judges, authorizing the division of the court into classes for the decision of cases, and empowering the General



Assembly to fix the term of Supreme judges at not less than six nor more than twelve years, was adopted by a vote of 30-15. Section 11, amending Section 8 of Article 7 of the Constitution, authorizing the creation of more than one circuit court in a county with concurrent jurisdiction, was adopted by a vote of 26-16. Section 12, amending Section 11 of Article 7 of the Constitution, fixing the term of prosecuting attorney at four years, was adopted; the vote being a tie, 22-22, the Lieutenant-Governor cast the deciding vote in the affirmative.<sup>7</sup> Later the vote on Section 12 was retaken and the amendment was rejected by a vote of 11-27. Section 13, amending Section 20 of Article 7 of the Constitution, providing for the initiative, the referendum and the recall of all officers except judges, was adopted by a vote of 31-11. Section 14, amending Section 21 of Article 7 of the Constitution, authorizing the General Assembly to prescribe the qualifications for the practice of law, was adopted by a vote of 27-17. Section 15, amending Section 8 of Article 8 of the Constitution, fixing the term of the State Superintendent of Public Instruction at four years, was adopted by a vote of 25-18. Section 16, amending Section 1 of Article 10 of the Constitution, authorizing the classification of property for purposes of taxation, was rejected by a vote of 20-25. Section 17, amending Section 13 of Article 11 of the Constitution, empowering the General Assembly to amend or alter the charters of corporations and voluntary associations, was rejected by a vote of 4-38. Section 18, amending Section 1 of Article 12 of the Constitution, admitting negroes to the State militia, was adopted by a vote of 36-6. Section 19, amending Section 1 of Article 15 of the Constitution, prohibiting the increase of the salary or emoluments of any officer to take effect during the term for which he was elected, was adopted by a vote of 40-2. Section 20, amending Section 1 of Article 16, providing that a proposed constitutional amendment adopted by a majority of both houses of one General Assembly should be submitted to the people for ratification and if a majority of the votes cast on the proposition were in favor of adoption, the amendment should be considered adopted, was adopted by a vote of 28-18. Later the vote on Section 20 was reconsidered and the amendment was lost by a vote of 22-25. Section 21, amending Section 2 of Article 16 of the Constitution, deleting the provision prohibiting the proposal of additional amendments while amendments were awaiting action, was adopted by a vote of 33-10. On February 24, the following report and proposals were submitted to the Senate.

FINAL REPORT EMBODYING STOTSENBURG AMENDMENTS (FEBRUARY 24, 1915).

[*Senate Journal, Sixty-ninth Session, 856.*]

Senator Van Nuys then asked unanimous consent of the Senate to introduce substitute engrossed Senate joint resolution No. 1 in lieu of the original engrossed Senate joint resolution No. 1, which substitute engrossed Senate joint resolution No. 1 embodied only those sections of the original engrossed Senate joint resolu-

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7. This vote is so recorded in the Journal. Of course, no amendment could be adopted except by the affirmative votes of a majority of the senators.



tion No. 1 which passed the Senate, under the motion to consider each section separately, and to which had been added Sections 2 and 3.

Engrossed Senate joint resolution No. 1, as follows:

A joint resolution agreeing to certain proposed amendments to the Constitution of the State of Indiana and providing for their reference to the people.

Section 1. *Be it resolved by the General Assembly of the State of Indiana*, That the following proposed amendments to the Constitution of the State of Indiana, which were agreed to by the Sixty-eighth General Assembly and referred to this General Assembly, be agreed to by this the Sixty-ninth General Assembly of the State of Indiana, and referred to the electors of the State at the next general election, to-wit:

#### PROPOSAL NO. 1.

That Section 12 of Article 1 of the Constitution of the State of Indiana be amended to read as follows:

Sec. 12. All courts shall be open; and every man, for injury done to him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law for injuries or death occurring in hazardous employment. In enacting such law, the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

#### PROPOSAL NO. 2.

That Section 2 of Article 2 of said Constitution be amended to read as follows:

Sec. 2. In all elections not otherwise provided for by this Constitution every male citizen of the United States of the age of twenty-one years and upward, who shall have resided in the State during the twelve months, and in the township sixty days and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside if he shall have been duly registered, if registration is required by law. The General Assembly shall provide by law for the registration of voters: *Provided*, That the General Assembly may exempt from the operation of any registration law, counties having a population of less than fifty thousand inhabitants, as shown by

the last preceding United States census, and in any county so exempted, registration shall not be a qualification for voting.

Any person who was a voter under the provisions of Section 2 Article 2, of the Constitution of the State of Indiana, as amended March 24, 1881, shall continue to be a voter under this Constitution, if he continues to reside in the State of Indiana, but before any such person shall be permitted to vote he shall have resided in the township sixty days and in the precinct thirty days immediately preceding the election, and be registered, if registration is required by law.

### PROPOSAL NO. 3.

That Section 14 of Article 2 of said Constitution be amended to read as follows:

Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction by an election to be held for such officers only, at which time no other officer shall be voted for.

### PROPOSAL NO. 4.

That Section 14 of Article 5 of said Constitution be amended to read as follows:

Sec. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objection, at large, upon its journal, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary

of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly. The Governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

PROPOSAL NO. 5.

That Section 1 of Article 7 of said Constitution be amended to read as follows:

Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts and in such other courts of special, general or appellate jurisdiction as the General Assembly may establish.

PROPOSAL NO. 6.

That Section 2 of Article 7 of said Constitution be amended to read as follows:

Sec. 2. The Supreme Court shall consist of not less than three nor more than twelve judges. For the purpose of deciding cases, such judges may be divided by the General Assembly into classes of not less than three each, and a majority of each class may be authorized to decide cases. If not so divided a majority of such court shall constitute a quorum. The term of office of such judges shall be fixed by the General Assembly, and such term shall not be less than six years nor more than twelve years, and such judges shall be permitted to serve for the term for which they were elected if they so long behave well.

PROPOSAL NO. 7.

That Section 8 of Article 7 of said Constitution be amended to read as follows:

Sec. 8. The circuit courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law. Whenever the General Assembly shall deem it expedient it may create more than one circuit court in the same county, but each of such courts shall have equal and concurrent jurisdiction.

PROPOSAL NO. 8.

That Section 20 of Article 7 of said Constitution be amended to read as follows:

Sec. 20. The General Assembly shall, from time to time, take

such steps as may be necessary for the codification of the laws of the State, and may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no law for the recall of the judiciary shall ever be passed. The General Assembly shall provide by law for the impeachment of all officers, including judges.

PROPOSAL NO. 9.

That Section 21 of Article 7 of said Constitution be amended to read as follows:

Sec. 21. The General Assembly may by law provide for the qualification of persons admitted to the practice of the law.

PROPOSAL NO. 10.

That Section 8 of Article 8 of said Constitution be amended to read as follows:

Sec. 8. The General Assembly shall provide for the election, by voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for four years and whose duties and compensation shall be prescribed by law.

PROPOSAL NO. 11.

That Section 1 of Article 12 of said Constitution be amended to read as follows:

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

PROPOSAL NO. 12.

That Section 1 of Article 15 of said Constitution be amended to read as follows:

Section 1. All State officers whose appointments are not otherwise provided for in this Constitution, shall be elected by the people or appointed as may be provided by law; and all municipal and local officers shall be elected or appointed as provided by law; and no officer shall have his salary, compensation or emoluments increased during the period for which he was elected, nor shall any law be passed extending the term of any officer beyond the term for which such officer was elected, except as provided in Section 6 Article 3 of this Constitution.

## PROPOSAL NO. 13.

That Section 2 of Article 16 of said Constitution be amended to read as follows:

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors may vote for or against each of such amendments separately.

Sec. 2. The Secretary of the Senate is hereby ordered to spread this resolution and said proposals in full on the Journal of this Senate, and thereupon to transmit said proposals to the House of Representatives for its action thereon.

Sec. 3. That it is hereby made the duty of the State Board of Election Commissioners of the State to cause said proposed amendments to be printed on the official ballots to be voted at such election, in the manner prescribed by law.

The resolution embodying the 13 proposed amendments, was then adopted as a whole by a vote of 33-8. On March 1, the resolution was read a first time in the House and referred to the Committee on Judiciary A. On March 6, the resolution was indefinitely postponed.

**534. Minimum Wage (February 10, 1915).**

On February 10, Mr. Fred Feick, a Democrat, introduced a resolution in the House proposing an amendment to the Constitution authorizing the General Assembly to provide for the establishment of a minimum wage. The resolution was referred to the Committee on Judiciary A, and was indefinitely postponed.

*[House Journal, Sixty-ninth Session, 587.]*

A joint resolution proposing an amendment to the Constitution of the State of Indiana by adding to Article 15 a section, to be numbered Section 11, in relation to the establishment of a minimum wage.

**535. Filling Vacancies in Office (February 18, 1915).**

On February 18, Mr. John W. Judkins, a Progressive, proposed the following amendment relative to filling vacancies in the General Assembly. On February 27, the resolution was indefinitely postponed.

*[House Journal, Sixty-ninth Session, 860.]*

Joint resolution No. 4 to amend the Constitution of the State of Indiana by adding a new section to Article 4 and by repealing Section 19 of Article 5.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That the following proposed amendment to the Constitution of the State of Indiana be and the same is now agreed



to and referred to the Seventieth General Assembly of the State of Indiana: That there be added to Article 4 of the Constitution a new section numbered Section 31, which shall read as follows: Section 31. Vacancies occurring in the General Assembly shall be filled in such manner as shall be prescribed by law.

Sec. 2. And that Section 19 Article 5 be repealed.

### 536. Constitutional Convention.

Several attempts were made during the session of 1915 to call a constitutional convention. On January 22, Mr. John W. Judkins, a Progressive, introduced a bill in the House to call a convention. On January 29, a divided report was submitted; the minority report, recommending passage, was laid on the table by a vote of 65-17; the majority report recommending indefinite postponement was adopted.

*[House Journal, Sixty-ninth Session, 199.]*

House bill No. 140. A bill for an act to provide for the assembling of a constitutional convention.

On February 22, Mr. John R. Jones presented a second bill in the House providing for the call of a constitutional convention. On March 6, the bill failed to pass, the vote being 45-49. A subsequent attempt to reconsider the vote was unsuccessful.

Senator Otis L. Ballou introduced the same bill in the Senate on February 22, but the bill was not advanced beyond engrossment.

*[Original Bill.]*

A bill for an Act to provide for taking the sense of the voters of the State of Indiana on a call for a constitutional convention to be provided for by the 70th General Assembly of Indiana.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the inspectors of elections in the several townships and voting precincts within each county in this State at the regular election to be held in November, 1916, to open a poll in which shall be entered all the votes given for or against the calling of a convention to alter, revise or amend the the Constitution of the State of Indiana, or to formulate a new Constitution if deemed advisable.

Sec. 2. Every voter in the State of Indiana who is qualified to vote upon the election of any officer to be voted for at the general election of 1916 may, at said election, vote for or against the calling of a convention for the purpose mentioned in the first section of this act.

Sec. 3. The county board of election commissioners shall fur-

nish to each inspector of such election the same number of ballots to be used by the voters in determining whether such convention shall be called, as is furnished of county ballots. Said ballots shall be in the following form, to-wit:

Are you in favor of a constitutional convention to be provided for by the 70th General Assembly?

☐ Yes.

☐ No.

Such ballot shall be printed on plain white paper four inches square. The expense of printing said ballots and furnishing the ballots, boxes and supplies hereinafter mentioned shall be paid by the respective boards of commissioners of the several counties of the State as other expenses of elections are paid. Each voter shall indicate his desire as to the calling of such convention by marking said ballot in the manner following, viz.: If such voter is in favor of calling a constitutional convention he shall make a mark thus, "X" in the square in front of the word "Yes", and if he is opposed he shall make a mark thus, "X" in the square in front of the word "No." Such ballots after being marked by the voter shall be deposited in a separate box to be provided for the purpose. Voting machines shall not be used in the election upon the question.

Sec. 4. The ballots to be used at such election shall be prepared under the authority of the election commissioners in the same manner as other ballots to be used in such election are prepared; shall be marked with the initials of the poll clerks; shall be furnished to all persons voting at such election, and all the provisions for secrecy in voting upon such question shall be observed that are now provided by the general election laws for voting upon the election of candidates. All of the provisions of the general election laws, in so far as they can be made applicable to the election upon this question, shall apply thereto and the penalties provided for violations of the general election laws shall be applicable to violations of any of the provisions of this act.

Sec. 5. At the close of the polls it is hereby made the duty of the several boards of election to canvass on the county tally sheet the ballots cast upon said question, and the number of votes given for or against the calling such convention, and such vote shall be canvassed by the county board of canvassers the same as the votes for candidates are canvassed by such board, certified to the clerks of the circuit court respectively, upon certificates to be furnished

such inspectors and board of canvassers, with the other election supplies.

Sec. 6. It shall be the duty of the clerk of the circuit court throughout the State to certify and make return of all votes given for or against the calling of such convention, and also all the votes that were given at such election, to the Secretary of State in the same way and manner that votes for Governor are required by law to be certified, and such clerks shall be subject to like penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly all the returns received by him pursuant to the provisions of this act, and also to certify the total vote at said election and the vote for and against said question to the Governor.

Sec. 7. In the notice of said general election to be held in November, 1916, shall be included a notice to the electors that the polls will be open for the purpose specified in this act.

Sec. 8. If a majority of the electors voting at such election on the proposition to call a constitutional convention, shall be in favor of calling a constitutional convention, then it shall be the duty of the Governor to issue his proclamation that said proposition has carried.

### **537. Republican State Platform of 1916 (April 19, 1916).**

The Republican Party, at its Convention held in the city of Indianapolis on April 19, 1916, adopted the following resolutions relative to Constitutional amendments designed to effect reforms in taxation and to authorize the Governor to veto separate items in appropriation bills.

*[Indiana Daily Times, April 19, 1916.]*

We favor a constitutional amendment fixing a limit to the tax rate and giving the legislature power to effect taxation reform, and upon the adoption of such amendment, we pledge our support to a thorough revision of our system of taxation to the end that all property and persons shall bear equitably the burdens of governmental support.

We favor the amendment of the Constitution so as to authorize the Governor to veto any single or more items in any appropriation bill; and also prohibiting the increase of any official salary for the term of the office, whether held by election or appointment.

### **538. Democratic State Platform of 1916 (April 26, 1916).**

The Democratic Party, which held its Convention in the city of Indianapolis on April 26, 1916, said nothing about Constitutional reforms, but adopted the following resolution concerning taxation which has a direct bearing on the question of constitutional reform.

[*The Indianapolis Star*, April 27, 1916.]

We assert that such injustice and inequality as now exist in the matter of taxation can be remedied by legislation and administration under present constitutional provisions, and we pledge such legislation and administration as may be necessary in equalizing taxes throughout the State and reducing the burden of taxation to the lowest possible limit.

**539. Progressive Platform of 1916 (July 20, 1916).**

The Progressive Party met in Convention in the city of Indianapolis on July 20, 1916. After demanding a concentration of State boards and departments, the short ballot, and that the Governor be allowed to present a budget, introduce bills and speak for them on the floor of either house, the platform ended by demanding the call of a constitutional convention.

[*Indianapolis Star*, July 21, 1916.]

To these ends we need a constitutional convention. A constitutional convention is the greatest need of our State today.

We need a new Constitution because we must adjust our constitutional provisions of a past age to the expanding and complex needs of the twentieth century.

We need a Constitution which can be amended. Our present one is practically impossible to amend.

We need a new Constitution in order to obtain the complete separation of the judiciary from party politics, in order to obtain a law permitting jury verdicts in civil cases by a three-fourths vote, to require qualifications for lawyers and to require the status of citizenship as a right preliminary to the vote.

We need a new Constitution so that we may obtain the initiative and referendum and the recall for all elective executive, administrative and legislative officers.

We need a new Constitution in order to obtain genuine tax reform. The Republican platform makes a weak appeal for tax reform, but dares not appeal for the only means by which genuine tax reform can be obtained, namely, by a constitutional convention.

We need a new Constitution in order to obtain equal suffrage for women. We need a new Constitution in order to obtain home rule for cities.

We pledge the legislative candidates of the Progressive party to call a constitutional convention.

We favor prohibition of the liquor traffic by national and State constitutional amendment.

## Appendix.

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### I. ELECTION ON THE QUESTION OF VOTING BY BALLOT OR VIVA VOCE (AUGUST 6, 1821).

The only vote obtainable for the election of August 6, 1821, on the question of voting by ballot or viva voce, is for Knox County. According to the "Western Sun" of August 11, 1821, Knox County polled 387 votes in favor of voting by ballot, and 250 votes in favor of voting viva voce. Only 15 out of the 39 counties submitted returns to the office of Secretary of State.

### II. ELECTION ON THE QUESTION OF CALLING A CONSTITUTIONAL CON- VENTION (AUGUST 4, 1823).

On December 8, 1823, the Speaker laid before the House the following communication from R. A. New, Secretary of State, giving the vote on the question of calling a constitutional convention, which was cast at the general election held on August 4, 1823.

*[House Journal, Eighth Session, 52.]*

<i>From the County of:</i>	<i>Convention.</i>	<i>No Convention.</i>
Floyd.....	113	318
Wayne.....	72	1,664
Dearborn.....	75	1,649
Vigo.....	56	282
Franklin.....	26	1,056
Parke.....	44	258
Johnson.....	..	66
Montgomery.....	6	77
Morgan.....	16	172
Spencer.....	186	69
Owen.....	33	183
Washington.....	233	1,291
Fayette.....	20	685
Greene.....	20	312
Decatur.....	43	208
Rush.....	27	305
Switzerland.....	40	602
Crawford.....	85	139
Pike.....	50	170
Orange.....	468	132
Martin.....	75	96
Harrison.....	208	736
Hamilton.....	..	86
Shelby.....	16	225



<i>From the County of:</i>	<i>Convention.</i>	<i>No Convention.</i>
Knox.....	353	345
Gibson.....	215	186
Ripley.....	62	396
Marion.....	56	268
	<hr/>	<hr/>
	2,601	11,991

This list contains only 28 counties. The "Western Sun" of August 23, 1823, gives the following vote for three counties not included in the foregoing official statement.

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Clark.....	114	790
Jefferson.....	76	1,016
Vanderburgh.....	196	34
	<hr/>	<hr/>
	386	1,840

The "Indiana Gazette" of September 3, 1823, gives the following vote for two counties not included in the foregoing lists:

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Perry.....	49	171
Dubois.....	45	122
	<hr/>	<hr/>
	94	293

The vote of Knox County by townships at the election of 1823, taken from a manuscript copy bound with the "Western Sun" of January 13, 1821-January 24, 1824, and kept in the State Library at Indianapolis, is as follows:

<i>Township.</i>	<i>Convention.</i>	<i>No Convention.</i>	<i>No. Voters.</i>
Vincennes.....	214	156	414
Palmyra.....	25	12	43
Widner.....	5	32	43
Johnson.....	32	10	42
Harrison.....	33	36	77
Decker.....	6	9	33
Busseron.....	3	37	42
Washington.....	35	53	98
	<hr/>	<hr/>	<hr/>
	353	345	792

### III. ELECTION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION (AUGUST 4, 1828).

On December 5, 1828, a report was made to the Senate, giving the result of the election held on August 4, 1828, on the question of calling a constitutional convention. According to that statement, the Secretary of State had received returns from 42 counties, and there were 16 counties from which no returns had been received. The total vote for a convention, according to the partial returns, was 10,092, and the total vote against a convention, 18,633. The only detailed official abstract of this vote is in

Appendix A of the House Journal of the Thirteenth Session. In that abstract returns are given for ten counties; 18 are marked "no return," and nothing is said about the remainder. The constitutional vote, as set forth in Appendix A, is as follows:

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Warriek.....	293	83
Vanderburgh.....	no return	no return
Spencer.....	no return	no return
Daviess.....	no return	no return
Owen.....	no return	no return
Monroe.....	no return	no return
Jennings.....	no return	no return
Putnam.....	no return	no return
Fayette.....	no return	no return
Montgomery.....	57	390
Wayne.....	644	1,418
Franklin.....	no return	no return
Vigo.....	no return	no return
Rush.....	no return	no return
Delaware.....	no return	no return
Morgan.....	no return	no return
Madison.....	no return	no return
Knox.....	no return	no return
Sullivan.....	no return	no return
Floyd.....	no return	no return
Tippecanoe.....	no return	no return
Warren.....	17	108
Washington.....	601	932
Clark.....	563	770
Scott.....	289	110
Harrison.....	593	588
Dearborn.....	308	1,779
Fountain.....	131	342

I do hereby certify the above to be true and correct.

December 3, 1828.

J. F. D. LANIER, *Clerk.*

The following vote for the same election is found in the "Western Sun" of August 9 and 16, 1828:

<i>County.</i>	<i>Convention.</i>	<i>No Convention</i>
Knox.....	603	261
Orange.....	318	298
Martin.....	185	101
Warriek.....	293	83
Perry.....	115	266
Spencer.....	194	138
Posey.....	460	378
Gibson.....	222	341
Putnam.....	81	400
Vermilion.....	74	395
Parke.....	255	409

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Morgan.....	273	296
Monroe.....	286	416
Marion.....	324	577
Vigo.....	178	401
Jefferson.....	278	1,081
Floyd.....	197	474

The "Lawrenceburg Palladium" of August 9, 1828, gives the following vote for Dearborn County:

<i>Convention.</i>	<i>No Convention.</i>
308	1,779

#### IV. ELECTION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION (AUGUST 3, 1840).

On December 14, 1840, the President laid before the Senate the following report from the Secretary of State, giving an abstract of the vote cast at the general election of August 3, 1840, on the question of calling a constitutional convention.

[*Senate Journal, Twenty-fifth Session, 41.*]

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Allen.....	39	664
Bartholomew.....	26	272
Blackford.....	32	150
Brown.....	112	196
Carroll.....	122	1,047
Cass.....	17	173
Clark.....	146	1,034
Clay.....	151	517
Clinton.....	78	459
Daviess.....	17	152
Dearborn.....	709	2,406
Decatur.....	318	1,284
DeKalb.....	46	165
Delaware.....	132	1,078
Dubois.....	164	208
Elkhart.....	143	586
Fayette.....	130	1,520
Floyd.....	56	852
Franklin.....	180	1,029
Fulton.....	37	284
Gibson.....	106	1,319
Grant.....	74	571
Greene.....	132	525
Hamilton.....	348	1,135
Harrison.....	194	1,240
Hendricks.....	491	1,350
Henry.....	153	2,185
Jackson.....	154	638

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Jefferson.....	244	1,340
Jennings.....	144	875
Johnson.....	155	1,229
Kosciusko.....	49	470
Lake.....	104	124
Laporte.....	272	884
Lawrence.....	407	1,207
Madison.....	218	491
Marshall.....	33	290
Marion.....	268	1,864
Martin.....	173	300
Miami.....	52	433
Monroe.....	293	1,008
Montgomery.....	207	2,366
Morgan.....	191	1,681
Noble.....	54	179
Orange.....	430	1,171
Owen.....	505	768
Parke.....	306	1,961
Perry.....	55	446
Pike.....	109	634
Porter.....	99	200
Posey.....	126	1,252
Randolph.....	83	1,079
Rush.....	345	2,407
Scott.....	137	600
Shelby.....	689	1,326
Spencer.....	130	636
St. Joseph.....	126	657
Steuben.....	203	151
Switzerland.....	53	1,438
Tippecanoe.....	276	1,673
Vanderburgh.....	126	588
Vermilion.....	105	1,269
Vigo.....	320	1,454
Wabash.....	32	307
Warren.....	108	1,007
Warriek.....	137	820
Washington.....	536	1,812
Whitley.....	55	105
Wells.....	12	171
	<hr/> 12,277	<hr/> 61,721

No returns have been received from the following counties, viz.: Adams, Boone, Benton, Crawford, Fountain, Hancock, Jay, Lagrange, Pulaski, Putnam, Sullivan, Union, Wayne, and White.

Respectfully,

WM. J. BROWN, *Secretary of State.*

This report may also be found in the Documentary Journal of 1840, p. 217.

The "Western Sun and General Advertiser" of August 8, 1840, gives the following vote of Knox County by townships:

<i>Township.</i>	<i>Convention..</i>	<i>No Convention.</i>
Vincennes.....	189	438
Washington.....	25	151
Vigo.....	33	92
Busseron.....	..	..
Widner.....	6	42
Palmyra.....	78	72
Harrison.....	16	91
Johnson.....	10	49
Decker.....	30	60
	<hr/> 389	<hr/> 993

The vote of Marion County at the election of 1840 on the question of calling a constitutional convention as given in the "Tri-weekly Journal" of August 11, 1840, is as follows:

<i>Township.</i>	<i>For Convention.</i>	<i>Against Convention.</i>
Center.....	86	840
Wayne.....	..	...
Pike.....	15	183
Washington.....	72	251
Lawrence.....	1	...
Warren.....	35	187
Franklin.....	9	217
Perry.....	50	188
Decatur.....	..	...
	<hr/> 268	<hr/> 1,866

#### V. ELECTION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION (AUGUST 3, 1846).

[*Documentary Journal, Thirtieth Session, 79.*]

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Adams.....	124	207
Allen.....	507	702
Bartholomew.....	..	...
Benton.....	68	3
Blackford.....	130	20
Boone.....	268	288
Brown.....	159	244
Carroll.....	320	326
Cass.....	367	496
Clark.....	1,042	238
Clay.....	21	25



<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Clinton.....	153	217
Crawford.....	47	184
Daviess.....	63	204
Dearborn.....	613	572
Decatur.....	516	1,213
DeKalb.....	50	219
Delaware.....	759	295
Dubois.....	476	156
Elkhart.....	942	309
Fayette.....	484	778
Floyd.....	599	48
Fountain.....	1,057	20
Franklin.....	1,228	137
Fulton.....	323	145
Gibson.....	...	...
Grant.....	...	...
Greene.....	283	682
Hamilton.....	726	259
Hancock.....	668	376
Harrison.....	...	...
Hendricks.....	323	684
Henry.....	308	794
Huntington.....	...	...
Jackson.....	462	447
Jasper.....	106	132
Jay.....	69	288
Jefferson.....	1,009	1,381
Jennings.....	307	286
Johnson.....	729	261
Knox.....	402	430
Kosciusko.....	418	211
Lagrange.....	85	81
Lake.....	164	13
Laporte.....	441	187
Lawrence.....	1,313	410
Madison.....	724	398
Marion.....	604	1,484
Marshall.....	580	3
Martin.....	116	142
Miami.....	315	241
Monroe.....	...	...
Montgomery.....	203	742
Morgan.....	306	596
Noble.....	...	...
Ohio.....	...	...
Orange.....	354	695
Owen.....	984	198
Parke.....	730	263
Perry.....	85	387

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Pike.....	34	414
Porter.....	246	97
Posey.....	183	172
Pulaski.....	...	...
Putnam.....	1,121	1,194
Randolph.....	636	260
Richardville.....	41	84
Ripley.....	237	1,268
Rush.....	1,099	1,041
Scott.....	62	187
Shelby.....	958	341
Spencer.....	439	435
Steuben.....	83	74
St. Joseph.....	423	348
Sullivan.....	804	440
Switzerland.....	...	...
Tippecanoe.....	1,456	541
Tipton.....	48	101
Union.....	...	...
Vanderburgh.....	20	92
Vermilion.....	...	...
Vigo.....	701	960
Wabash.....	416	394
Warren.....	...	...
Warrick.....	249	280
Washington.....	712	682
Wayne.....	...	...
Wells.....	36	213
White.....	138	104
Whitley.....	150	284
	32,468	27,123

I certify the above and foregoing report to be correct so far as returns have come to hand.

JNO. H. THOMPSON,

*Secretary of State.*

The vote of Marion County on the question of calling a constitutional convention, submitted on August 3, 1846, as given by the Indiana State Journal of August 12, 1846, was as follows:

<i>Township.</i>	<i>For Convention.</i>	<i>Against Convention.</i>
Center.....	125	511
Perry.....	71	63
Decatur.....	22	89
Wayne.....	115	224
Pike.....	10	137
Washington.....	48	190
Lawrence.....	136	70
Warren.....	104	99
Franklin.....	43	106

VI. ELECTION ON THE QUESTION OF CALLING A CONSTITUTIONAL  
CONVENTION (AUGUST 6, 1849).

[*Documentary Journal, Thirty-fourth Session, 81.*]

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Adams.....	438	296
Allen.....	1,130	483
Bartholomew.....	1,025	897
Benton.....	102	61
Blackford.....	203	160
Boone.....	804	857
Brown.....	415	175
Carroll.....	887	607
Cass.....	990	575
Clark.....	1,687	590
Clay.....	726	493
Clinton.....	827	778
Crawford.....	573	440
Daviess.....	693	768
Dearborn.....	1,087	1,450
Decatur.....	1,068	1,328
DeKalb.....	555	156
Delaware.....	781	637
Dubois.....	547	259
Elkhart.....	1,618	364
Fayette.....	1,280	552
Floyd.....	1,205	799
Fountain.....	1,109	668
Franklin.....	1,363	928
Fulton.....	512	366
Gibson.....	1,150	602
Grant.....	632	573
Greene.....	976	952
Hamilton.....	1,019	769
Hancock.....	1,033	394
Harrison.....	1,175	1,022
Hendricks.....	782	982
Henry.....	1,517	1,261
Howard.....	504	379
Huntington.....	558	125
Jackson.....	917	652
Jasper.....	102	201
Jay.....	358	266
Jefferson.....	1,338	1,804
Jennings.....	532	988
Johnson.....	1,155	635
Knox.....	901	490
Kosciusko.....	1,097	404
Lagrange.....	819	233
Lake.....	393	66

<i>County.</i>	<i>Convention.</i>	<i>No Convention.</i>
Laporte.....	1,686	196
Lawrence.....	873	1,076
Madison.....	759	1,002
Marion.....	1,609	1,956
Marshall.....	545	155
Martin.....	302	467
Miami.....	749	707
Monroe.....	878	863
Montgomery.....	1,198	1,706
Morgan.....	1,024	1,279
Noble.....	916	215
Ohio.....	516	329
Orange.....	1,106	715
Owen.....	1,222	539
Parke.....	1,476	1,117
Perry.....	316	661
Pike.....	697	312
Porter.....	677	117
Posey.....	1,492	545
Pulaski.....	187	130
Putnam.....	1,577	1,358
Randolph.....	1,041	523
Ripley.....	596	1,193
Rush.....	1,656	1,289
Scott.....	448	457
Shelby.....	1,360	889
Spencer.....	552	569
Steuben.....	590	178
St. Joseph.....	1,545	148
Sullivan.....	1,114	555
Switzerland.....	1,082	1,057
Tippecanoe.....	1,513	938
Tipton.....	215	179
Union.....	804	361
Vanderburgh.....	594	519
Vermilion.....	981	537
Vigo.....	1,509	776
Wabash.....	971	579
Warren.....	538	526
Warriek.....	830	505
Washington.....	1,630	979
Wayne.....	2,439	954
Wells.....	401	278
White.....	292	265
Whitley.....	411	234
	81,500	57,418

## VII. RATIFICATION OF THE CONSTITUTION (AUGUST 6, 1851).

The proposed new constitution, framed by the Convention which met in 1850, was submitted to the electors on August 4, 1851. Following is the vote cast in favor of and against the ratification of the constitution and in favor of and opposed to negro exclusion, which was submitted as a separate proposition.

[*Weekly State Journal, September 20, 1851.*]

COUNTIES.	For the Constitution.	Against the Constitution.	For Negro Exclusion.	Against Negro Exclusion.
Adams.....	643	39	541	120
Allen.....	1,830	260	1,775	261
Bartholomew.....	1,753	318	1,855	144
Benton.....	180	6	174	15
Blackford.....	438	12	414	15
Boone.....	1,211	381	1,248	187
Brown.....	596	116	686	39
Carroll.....	1,405	179	1,289	203
Cass.....	1,431	185	1,393	179
Clarke.....	1,873	359	2,197	95
Clay.....	1,056	113	1,096	32
Clinton.....	1,314	102	1,117	146
Crawford.....	803	163	859	91
Daviess.....	1,097	342	1,168	97
Dearborn.....	2,082	1,042	2,444	423
Decatur.....	1,623	672	2,012	213
DeKalb.....	710	95	461	415
Delaware.....	1,261	388	1,328	169
Dubois.....	803	20	739	2
Elkhart.....	905	257	486	786
Fayette.....	1,411	218	1,417	275
Floyd.....	1,195	739	1,711	143
Fountain.....	2,017	161	1,653	165
Franklin.....	2,381	190	2,331	184
Fulton.....	903	49	824	142
Gibson.....	1,152	605	1,575	131
Grant.....	1,105	542	1,005	596
Greene.....	1,336	475	1,331	115
Hamilton.....	1,022	606	1,135	597
Hancock.....	1,358	76	1,327	88
Harrison.....	1,630	423	1,898	75
Hendricks.....	1,462	352	1,410	328
Henry.....	2,200	621	1,931	802
Howard.....	687	258	592	34
Huntington.....	1,046	210	961	16
Jackson.....	1,429	130	1,432	89
Jasper.....	609	10	496	64
Jay.....	845	113	587	337
Jefferson.....	2,208	1,009	2,624	411
Jennings.....	1,513	278	1,552	168
Johnson.....	981	369	1,172	89
Knox.....	984	661	1,461	89
Kosciusko.....	1,473	80	1,179	319
Lagrange.....	1,010	86	423	654
Lake.....	488	8	287	187
Laporte.....	1,769	132	1,338	635
Lawrence.....	1,232	546	1,611	150
Madison.....	1,518	324	1,563	208
Marion.....	2,112	740	2,505	308
Marshall.....	790	18	587	278



COUNTIES.	For the Constitution.	Against the Constitution.	For Negro Exclusion.	Against Negro Exclusion.
Martin.....	571	246	725	76
Monroe.....	1,244	423	1,463	127
Montgomery.....	2,140	688	2,186	611
Morgan.....	1,553	327	1,371	309
Noble.....	530	390	541	340
Ohio.....	315	438	680	62
Orange.....	1,263	184	1,347	24
Owen.....	1,531	215	1,534	30
Parke.....	1,635	500	1,812	265
Perry.....	955	119	957	78
Pike.....	825	275	998	56
Porter.....	815	2	633	264
Posey.....	1,465	420	1,690	116
Pulaski.....	417	6	400	10
Putnam.....	2,375	274	2,466	96
Randolph.....	1,245	773	964	1,002
Ripley.....	1,059	941	1,408	384
Rush.....	2,348	306	2,268	331
St. Joseph.....	1,603	104	952	861
Scott.....	784	92	913	66
Shelby.....	1,693	242	1,823	93
Spencer.....	930	300	1,124	49
Starke.....	104	.....	88	8
Steuben.....	787	88	257	592
Sullivan.....	1,585	67	1,514	88
Switzerland.....	966	942	1,539	127
Tippecanoe.....	2,377	183	1,975	455
Tipton.....	540	26	533	36
Union.....	819	330	723	370
Vanderburgh.....	655	628	1,017	150
Vigo.....	1,820	235	1,974	107
Wabash.....	1,563	204	1,447	286
Warren.....	1,025	52	685	97
Warrick.....	1,305	103	1,350	34
Washington.....	1,889	677	2,171	388
Wayne.....	2,756	1,164	2,380	1,426
Wells.....	728	103	685	97
White.....	671	18	579	45
Whitley.....	769	83	739	62
Vermilion.....	1,211	221	1,337	38
Total.....	113,230	27,638	113,828	21,873

The vote of Marion County by townships is as follows:

[*Weekly State Journal, August 9, 1851.*]

TOWNSHIPS.	For the Constitution.	Against the Constitution.	For Negro Exclusion.	Against Negro Exclusion.
Centre.....	858	405	1,100	144
Decatur.....	116	109	15	105
Franklin.....	166	15	184	2
Lawrence.....	215	7	222	1
Perry.....	150	55	177	14
Pike.....	172	20	181	1
Warren.....	196	11	199	12
Washington.....	173	35	209	3
Wayne.....	166	83	222	18
Total.....	2,112	740	2,509	308

VIII. THE SEVEN CONSTITUTIONAL AMENDMENTS OF 1880  
(APRIL 5, 1880).

On April 5, 1880, seven constitutional amendments were submitted to the people for ratification or rejection. These amendments were as follows: Amendment No. 1 conferred the right of suffrage on negroes, fixed a residence period in the voting district, and authorized the General Assembly to enact a registration law. Amendment No. 2 struck out the section denying the right of suffrage to negroes. Amendment No. 3 fixed the date of the general election on the first Tuesday after the first Monday in November, and authorized the General Assembly to provide for the election of judges and for holding township elections on separate dates. Amendment No. 4 provided that the sexennial enumeration of voters\* and the apportionment of State senators and representatives should be based on the number of both white and negro male citizens. Amendment No. 5 authorized the General Assembly to grade the fees, salaries, and compensation of public officers. Amendment No. 6 altered the judicial system of the State, and made possible the creation of separate courts. Amendment No. 9 struck out the negro disability article, and fixed the debt limit of cities. The vote on the amendments follows:

## THE VOTE ON AMENDMENTS BY COUNTIES.

[Indianapolis Journal, April 20, 1880.]

COUNTIES.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Adams.....	880	1,151	917	1,032	920	1,086	921	1,065	949	1,062	920	1,083	943	961
Allen.....	3,419	4,310	3,515	4,000	3,445	4,254	3,589	3,879	3,883	3,744	3,689	3,932	3,906	3,049
Bartholomew.....	2,103	2,412	2,109	2,391	2,132	2,369	2,084	2,370	2,165	2,336	2,156	2,369	2,133	2,246
Benton.....	1,027	1,173	1,200	953	1,144	1,029	1,170	946	1,219	938	1,135	1,018	1,143	926
Blackford.....	648	801	670	765	654	793	659	760	699	749	654	784	643	757
Boone.....	2,301	2,605	2,347	2,480	2,393	2,477	2,332	2,446	2,214	2,435	2,291	2,553	2,343	2,362
Brown.....	335	1,156	341	1,130	344	1,139	333	1,127	368	1,121	345	1,145	342	1,094
Carroll.....	1,620	1,791	1,689	1,632	1,636	1,752	1,670	1,613	1,756	1,573	1,627	1,706	1,762	1,424
Cass.....	2,344	2,783	2,520	2,520	2,380	2,703	2,488	2,467	2,497	2,496	2,304	2,719	2,519	2,290
Clark.....	2,443	772	2,595	642	2,594	673	2,586	649	2,656	605	2,520	760	2,696	497
Clay.....	1,776	2,193	1,830	2,084	1,840	2,078	1,791	2,080	1,909	2,016	1,806	2,117	1,854	1,917
Clinton.....	1,923	2,546	2,020	2,488	1,962	2,561	2,021	2,454	2,053	2,469	1,975	2,532	1,955	2,412
Crawford.....	839	996	835	979	848	984	836	972	894	939	857	969	849	890
Daviss.....	1,843	1,132	1,881	1,049	1,903	1,060	1,865	1,033	1,990	947	1,961	980	2,004	845
Dearborn.....	1,132	2,445	1,198	2,331	1,169	2,307	1,183	2,298	1,237	2,302	1,168	2,352	1,231	2,166
Decatur.....	2,070	1,563	2,063	1,551	2,069	1,538	2,038	1,527	2,119	1,490	2,098	1,511	2,040	1,437
DeKalb.....	1,500	2,253	1,606	2,136	1,599	2,201	1,584	2,093	1,598	2,134	1,538	2,189	1,490	2,068
Delaware.....	2,704	1,119	2,807	983	2,840	963	2,793	955	2,847	930	2,743	1,046	2,626	972
Dubois.....	748	1,877	725	1,891	699	1,919	723	1,861	918	1,69	710	1,897	932	1,580
Elkhart.....	2,418	1,808	2,923	1,113	2,531	1,654	2,901	1,085	2,821	1,226	2,751	1,282	2,757	1,088
Fayette.....	1,246	763	1,293	673	1,185	819	1,207	670	1,330	639	1,277	601	1,284	533
Floyd.....	1,267	874	1,224	708	1,184	819	1,205	693	1,323	626	1,252	691	1,288	533
Fountain.....	1,652	1,915	1,783	1,746	1,779	1,732	1,781	1,711	1,877	1,656	1,749	1,773	1,768	1,572
Franklin.....	1,057	2,527	1,198	2,449	1,169	2,499	1,203	2,418	1,229	2,422	1,238	2,413	1,224	2,238
Fulton.....	1,308	1,364	1,321	1,336	1,323	1,335	1,320	1,300	1,382	1,261	1,322	1,306	1,317	1,283
Gibson.....	1,922	1,522	1,921	1,488	1,930	1,483	1,899	1,491	1,964	1,445	1,945	1,474	1,932	1,350

Grant.....	2,395	1,852	2,496	1,674	2,482	1,716	2,486	1,664	2,518	1,674	2,434	1,760	2,500	1,490
Greene.....	1,855	1,913	1,943	1,791	1,912	1,826	1,934	1,769	2,061	1,676	1,878	1,841	1,944	1,651
Hamilton.....	2,509	1,824	2,726	1,411	2,629	1,578	2,747	1,382	2,991	1,130	2,851	1,262	2,879	1,075
Hancock.....	1,068	1,987	1,180	1,840	1,174	1,853	1,177	1,829	1,431	1,599	1,244	1,780	1,306	1,608
Harrison.....	1,530	1,567	1,624	1,409	1,586	1,495	1,599	1,391	1,646	1,383	1,599	1,433	1,591	1,280
Hendricks.....	2,623	1,828	2,663	1,730	2,654	1,773	2,637	1,721	2,708	1,711	2,576	1,856	2,559	1,692
Henry.....	3,292	1,241	3,658	775	3,374	1,119	3,663	745	3,779	680	3,610	838	3,557	690
Howard.....	2,391	1,414	2,570	1,001	2,421	1,352	2,544	985	2,585	1,030	2,497	1,129	2,612	848
Huntington.....	1,942	2,089	1,962	2,026	1,923	2,061	1,942	1,993	2,029	1,966	1,945	2,053	1,928	1,878
Jackson.....	1,185	2,274	1,233	2,182	1,208	2,228	1,309	2,085	1,246	2,176	1,212	2,207	1,312	1,990
Jasper.....	992	617	1,135	441	1,088	500	1,135	417	1,191	394	1,170	404	1,147	340
Jay.....	1,571	1,801	1,726	1,618	1,666	1,648	1,691	1,601	1,793	1,550	1,734	1,612	1,727	1,464
Jefferson.....	2,801	1,338	2,798	1,304	2,987	1,144	2,787	1,265	2,942	1,179	2,826	1,285	2,783	1,080
Jennings.....	1,815	1,338	1,928	1,119	1,859	1,255	1,888	1,122	1,953	1,110	1,934	1,130	1,910	1,037
Johnson.....	1,656	1,981	1,701	1,888	1,723	1,889	1,705	1,872	1,763	1,865	1,708	1,911	1,675	1,808
Knox.....	1,982	2,435	2,062	2,273	2,054	2,317	2,056	2,242	2,222	2,131	2,132	2,226	2,114	2,025
Kosciusko.....	2,439	2,142	2,513	2,039	2,527	2,023	2,432	2,023	2,541	2,005	2,478	2,052	2,439	1,892
Lagrange.....	1,477	998	1,518	920	1,494	956	1,498	910	1,525	988	1,508	902	1,436	810
Lake.....	1,553	51	1,543	74	1,550	56	1,544	58	1,541	50	1,485	105	1,504	51
Laporte.....	1,982	2,194	2,154	1,968	2,057	2,076	2,152	1,942	2,112	1,987	2,085	2,000	2,033	1,877
Lawrence.....	1,506	1,082	1,527	1,037	1,530	1,052	1,529	1,025	1,539	1,029	1,512	1,056	1,481	866
Madison.....	2,157	3,064	2,227	2,942	2,263	2,937	2,215	2,908	2,326	2,838	2,268	2,930	2,281	2,827
Marion.....	9,332	5,989	9,592	5,548	9,618	5,617	9,575	5,439	10,095	5,165	9,863	5,316	9,766	4,974
Marshall.....	1,363	2,035	1,407	1,953	1,363	1,998	1,383	1,923	1,411	1,946	1,368	1,992	1,345	1,836
Martin.....	640	1,308	580	1,303	626	1,298	617	1,282	620	1,275	610	1,307	604	1,207
Miami.....	2,362	1,774	2,454	1,536	2,374	1,643	2,427	1,534	2,497	1,432	2,476	1,525	2,437	1,317
Monroe.....	1,271	1,230	1,319	1,149	1,312	1,164	1,298	1,136	1,331	1,130	1,175	1,304	1,278	1,103
Montgomery.....	2,860	3,111	2,998	2,877	2,930	3,010	2,973	2,827	3,024	2,852	3,000	2,899	3,000	2,665
Morgan.....	2,044	1,658	2,062	1,601	2,117	1,576	2,047	1,562	2,160	1,529	2,089	2,106	2,106	1,457
Newton.....	995	391	1,084	289	1,072	294	1,075	276	1,132	219	1,157	200	1,142	176
Noble.....	2,093	2,000	2,652	960	2,119	1,934	2,652	898	2,768	966	2,862	1,032	2,914	792
Ohio.....	431	263	441	239	447	238	438	237	476	215	458	180	377	263
Orange.....	955	1,014	956	984	961	1,001	939	956	1,046	911	1,016	1,026	816	921
Owen.....	1,192	1,446	1,178	1,422	1,195	1,407	1,176	1,409	1,209	1,391	1,169	1,447	1,161	1,353
Parke.....	2,145	1,185	2,145	1,138	2,241	1,057	2,120	1,120	2,300	977	2,172	1,084	2,049	1,054
Perry.....	1,208	657	1,275	560	1,236	602	1,215	581	1,374	456	1,262	538	1,253	450

THE VOTE OF AMENDMENTS BY COUNTIES—Continued.

COUNTIES.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Pike.....	1,146	1,500	1,210	1,418	1,171	1,462	1,292	1,397	1,225	1,416	1,199	1,449	1,167	1,366
Porter.....	1,551	277	1,610	200	1,60	204	1,601	183	1,635	153	1,631	150	1,81	121
Posey.....	784	1,646	878	1,489	894	1,535	837	1,494	842	1,521	826	1,533	861	1,421
Pulaski.....	532	896	546	706	630	789	628	661	752	635	645	689	618	636
Putnam.....	2,033	2,420	2,062	2,358	2,092	2,355	2,052	2,341	2,127	2,304	2,029	2,398	2,054	2,258
Randolph.....	3,538	1,065	3,580	1,048	3,587	1,071	3,586	1,027	3,641	1,000	3,589	1,067	3,466	954
Ripley.....	1,567	1,836	1,576	1,795	1,576	1,800	1,545	1,782	1,610	1,749	1,553	1,817	1,453	1,699
Rush.....	2,165	1,910	2,211	1,837	2,239	1,824	2,193	1,824	2,215	1,847	2,183	1,880	2,155	1,718
Scott.....	625	836	631	826	654	792	632	795	737	720	682	772	713	787
Shelby.....	2,253	3,124	2,244	3,116	2,252	3,106	2,243	3,069	2,332	3,026	2,252	3,094	2,256	2,951
Spencer.....	1,744	1,414	1,807	1,322	1,799	1,336	1,787	1,294	1,837	1,279	1,815	1,314	1,885	1,068
Starke.....	204	528	218	511	211	525	213	509	283	444	218	508	351	348
St. Joseph.....	2,774	2,363	3,919	906	2,890	2,191	3,890	877	2,977	2,098	2,912	2,153	2,924	1,939
Stauben.....	1,642	511	1,733	386	1,609	544	1,767	325	1,829	304	1,719	416	1,754	270
Sullivan.....	1,358	2,359	1,413	2,261	1,409	2,294	1,396	2,236	1,316	2,182	1,429	2,289	1,487	2,075
Switzerland.....	993	1,060	1,028	1,003	1,005	1,031	1,009	989	1,046	993	1,003	1,036	945	953
Tippecanoe.....	3,555	1,932	3,725	1,648	3,670	1,755	3,655	1,617	3,726	1,548	3,706	1,560	3,753	1,305
Tipton.....	1,265	1,687	1,319	1,602	1,296	1,653	1,305	1,588	1,349	1,574	1,343	1,598	1,317	1,485
Union.....	920	400	944	367	971	345	930	365	998	315	945	363	922	319
Vanderburgh.....	4,452	1,703	4,098	1,934	4,207	1,597	4,028	1,874	3,790	2,096	4,081	1,888	4,349	1,495
Vermillion.....	1,256	965	1,256	727	1,321	674	1,255	709	1,391	797	1,281	689	1,316	562
Vigo.....	3,995	3,062	4,085	2,898	4,110	2,881	4,036	2,851	4,141	2,845	4,010	2,963	3,948	2,725
Wabash.....	2,924	1,481	3,192	1,106	2,956	1,410	3,214	1,103	3,254	1,055	3,018	1,268	3,130	1,018
Warren.....	1,425	629	1,475	564	1,495	536	1,471	518	1,601	427	1,499	520	1,496	417
Warrick.....	1,206	1,748	1,297	1,732	1,217	1,622	1,193	1,711	1,269	1,663	1,226	1,723	1,175	1,637
Washington.....	1,169	1,808	1,194	1,737	1,170	1,788	1,205	1,710	1,276	1,681	1,154	1,804	1,210	1,636



Wayne.....	4,768	1,142	4,822	1,034	4,842	1,027	4,748	1,027	4,958	899	4,719	1,128	4,738	744
Wells.....	975	2,136	1,034	2,052	1,015	2,077	1,023	2,026	1,073	2,024	1,089	2,083	1,037	1,962
White.....	1,461	887	1,473	846	1,535	800	1,488	821	1,534	780	1,537	768	1,554	604
Whitley.....	1,126	1,983	1,163	1,925	1,118	1,954	1,136	1,911	1,138	1,928	1,114	1,955	1,110	1,848
Totals.....	169,483	152,251	177,304	138,985	173,921	144,897	176,145	136,716	181,684	137,175	175,626	141,318	176,943	126,953

## THE VOTE OF MARION COUNTY BY TOWNSHIPS ON THE SEVEN CONSTITUTIONAL AMENDMENTS WAS AS FOLLOWS:

[Indianapolis Journal, April 12, 1880.]

TOWNSHIPS.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Centre.....	7,301	3,920	7,629	3,583	7,661	3,638	7,595	3,538	7,761	3,366	7,915	3,362	7,754	3,169
Wayne.....	404	322	408	306	420	300	426	276	461	273	424	292	412	269
Decatur.....	248	77	247	72	251	73	253	69	255	68	241	69	247	66
Perry.....	279	213	283	175	270	186	277	175	293	168	291	171	287	163
Franklin.....	181	311	187	300	182	307	186	301	211	278	185	307	191	295
Warren.....	235	327	228	312	240	322	235	307	271	288	241	313	255	287
Lawrence.....	229	241	237	228	271	219	238	229	307	263	241	227	246	199
Washington.....	187	316	233	278	222	279	222	270	214	281	223	277	213	263
Pike.....	118	321	144	288	133	298	143	279	152	281	132	298	141	283
Totals.....	9,132	6,048	9,596	5,548	9,641	5,622	9,575	5,444	9,925	5,166	9,883	5,316	9,546	4,994
Majorities.....	3,134		4,048		4,019		4,431		4,759		4,567		4,552	

## THE VOTE OF CENTER TOWNSHIP, MARION COUNTY, ON THE SEVEN CONSTITUTIONAL AMENDMENTS WAS AS FOLLOWS:

[*Indianapolis Journal*, April 7, 1880.]

WARDS.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
1.....	343	114	361	90	348	103	363	86	385	68	369	81	371	71
2.....	437	60	439	48	447	50	440	48	455	38	451	40	429	42
3.....	379	78	386	66	384	70	380	68	372	82	388	69	384	66
4.....	213	144	213	147	219	142	211	146	217	143	218	142	215	139
5.....	345	84	364	60	357	70	364	56	364	55	359	50	363	43
6.....	431	72	439	59	433	65	432	60	447	52	441	56	434	50
7.....	423	76	428	63	431	64	425	124	437	60	430	60	434	52
8.....	232	212	231	207	230	209	231	205	244	196	239	202	234	197
9.....	363	121	375	111	376	110	362	114	354	132	381	101	362	104
10.....	305	71	304	62	306	63	305	58	313	61	314	55	317	48
11.....	422	107	422	95	425	99	427	94	429	92	433	88	424	82
12.....	235	146	313	116	310	130	311	116	311	131	322	115	316	106
13.....	321	118	329	106	324	115	326	106	333	108	326	111	313	113
14.....	249	184	248	180	251	180	247	179	257	171	251	178	259	147
15.....	154	233	152	226	158	221	153	224	183	200	168	215	170	206
16.....	131	266	144	240	138	253	139	248	162	230	148	242	135	236
17.....	192	167	204	152	213	147	207	143	236	116	261	95	277	68
18.....	204	120	210	105	217	97	204	103	225	98	232	87	217	87
19.....	171	159	168	154	185	141	173	145	194	132	190	132	178	125
20.....	304	106	311	85	304	93	311	85	334	74	310	87	304	87
21.....	200	243	202	202	245	199	247	197	256	190	249	197	254	193
22.....	186	237	190	228	192	228	184	229	198	223	194	222	189	215
23.....	249	120	254	118	259	113	263	112	284	96	274	100	275	104

24.....	183	221	171	223	185	211	175	214	169	228	189	205	184	197
25.....	133	319	129	324	126	319	127	313	141	309	130	320	127	309
Centre Township--														
S. W. ....	88	8	88	7	88	7	84	8	87	5	84	8	79	6
N. E. ....	176	45	183	28	180	38	177	31	189	25	188	26	186	20
S. E. ....	155	93	187	57	188	59	186	55	26	26	194	53	210	26
N. W. ....	128	39	143	24	132	42	141	29	139	25	142	25	134	30
Totals.....	7,301	3,920	7,629	3,583	7,661	3,638	7,595	3,538	7,761	3,366	7,915	3,362	7,754	3,169
Majorities.....	3,381		4,046		4,023		4,057		4,395		4,553		4,585	

## IX. AMENDMENTS OF 1881 (MARCH 14, 1881).

At the special election of March 14, 1881, the seven amendments were re-submitted to the electors, upon which the following vote was cast. These amendments were numbered 1, 2, 3, 4, 5, 6, and 9, and the vote is given in that order in the table. Amendment No. 1 conferred the right of suffrage on negroes; Amendment No. 2 struck out the provision denying suffrage to negroes; Amendment No. 3 changed the date of general elections; Amendment No. 4 removed certain political disabilities of negroes by providing that the sexennial enumeration of voters and the apportionment of State senators and representatives should be based on the number of male citizens of the State above the age of 21 years, both white and negro; Amendment No. 5 authorized the grading of the salaries and compensation of public officials; Amendment No. 6 changed the judicial system of the State; and Amendment No. 9 fixed the debt limit of municipal corporations.

THE VOTE ON AMENDMENTS BY COUNTIES.  
*[Indianapolis Journal, March 22, 1881.]*

COUNTIES.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.		Total.
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	
Adams.....	549	267	436	268	574	231	543	250	589	227	546	260	589	184	816
Allen.....	2,909	1,030	2,918	975	3,061	861	2,911	934	3,185	737	3,095	817	3,021	701	4,070
Bartholomew.....	1,545	643	1,504	650	1,609	539	1,504	657	1,579	588	1,543	610	1,479	647	2,188
Benton.....	722	440	765	383	797	345	767	359	832	311	807	327	788	301	1,190
Blackford.....	395	169	384	155	387	154	384	150	392	150	384	163	368	156	554
Boone.....	1,675	1,006	1,697	974	1,747	905	1,672	970	1,757	970	1,680	988	1,721	851	2,681
Brown.....	175	90	188	72	179	82	184	60	202	62	182	84	189	67	266
Carroll.....	1,405	585	1,423	541	1,456	510	1,412	525	1,500	465	1,433	544	1,468	416	2,027
Cass.....	1,888	881	1,979	742	1,990	741	1,964	754	1,056	665	1,975	742	1,983	583	2,827
Clark.....	1,472	292	1,474	282	1,563	184	1,452	279	1,551	191	1,478	255	1,481	176	1,713
Clay.....	1,286	495	1,241	515	1,293	464	1,238	514	1,294	472	1,273	493	1,258	440	1,823
Clinton.....	1,371	1,110	1,470	993	1,475	982	1,460	964	1,489	966	1,493	980	1,450	888	2,551
Crawford.....	483	347	501	320	510	313	502	309	518	303	509	313	503	278	846
Daviess.....	1,180	298	1,197	266	1,259	270	1,182	264	1,262	199	1,245	224	1,218	186	1,520
Dearborn.....	1,292	841	1,337	753	1,281	814	1,327	729	1,341	761	1,329	773	1,302	675	2,167
Decatur.....	1,436	381	1,412	283	1,506	283	1,410	366	1,514	274	1,450	337	1,464	259	1,781
DeKalb.....	1,436	675	1,498	576	1,499	590	1,499	543	1,583	519	1,528	553	1,472	471	2,149
Delaware.....	1,463	246	1,476	223	1,507	181	1,463	218	1,496	197	1,476	225	1,425	187	1,747
Dubois.....	674	880	557	986	683	856	551	974	645	900	533	1,009	636	863	1,564
Elkhart.....	1,954	513	2,001	458	2,029	421	1,988	451	2,035	417	1,971	481	1,934	401	2,545
Payette.....	1,005	297	1,003	280	1,016	261	992	277	1,041	253	1,023	272	1,015	228	1,329
Floyd.....	970	295	960	293	994	256	939	292	1,001	262	995	249	993	218	1,304
Fountain.....	1,205	722	1,165	740	1,272	641	1,146	745	1,311	614	1,245	667	1,242	600	2,003
Franklin.....	932	524	886	536	974	467	876	524	945	468	920	499	915	447	1,479
Fulton.....	1,076	706	1,125	638	1,101	667	1,126	630	1,118	647	1,075	689	1,075	619	1,796
Gibson.....	1,391	380	1,342	409	1,404	357	1,319	417	1,399	363	1,385	373	1,349	338	1,813
Grant.....	1,684	604	1,771	502	1,783	494	1,751	498	1,814	262	1,718	558	1,777	412	2,331
Greene.....	1,189	503	1,208	451	1,221	449	1,194	446	1,280	392	1,235	426	1,224	365	1,722



THE VOTE ON AMENDMENTS BY COUNTIES—Continued.

COUNTIES.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.		Total.
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	
Hamilton.....	1,883	396	1,944	309	1,962	292	1,953	289	2,002	258	1,446	313	1,917	243	2,319
Hancock.....	853	550	885	510	910	480	876	501	926	463	915	482	895	443	1,428
Harrison.....	1,137	693	1,154	657	1,180	645	1,135	666	1,161	642	1,134	669	1,116	629	1,857
Hendricks.....	1,924	400	1,933	368	1,962	336	1,931	343	2,004	301	1,991	329	1,907	311	2,302
Henry.....	2,056	287	2,089	226	2,104	222	2,071	233	2,112	202	2,104	219	2,121	212	2,399
Howard.....	1,611	379	1,684	267	1,645	333	1,662	265	1,719	246	1,696	264	1,680	212	2,026
Huntington.....	1,496	530	1,508	491	1,543	478	1,503	493	1,540	466	1,508	509	1,527	401	2,055
Jackson.....	1,056	917	1,085	867	1,074	862	1,089	850	1,112	843	1,078	881	1,083	819	1,999
Jasper.....	703	197	739	159	737	161	744	141	750	144	745	150	731	124	921
Jay.....	1,223	521	1,215	517	1,240	487	1,200	513	1,235	501	1,220	506	1,205	455	1,783
Jefferson.....	1,564	656	1,553	639	1,591	599	1,538	632	1,591	606	1,550	656	1,413	698	2,285
Jennings.....	1,341	463	1,361	429	1,372	418	1,347	427	1,379	412	1,350	436	1,304	407	1,825
Johnson.....	1,315	806	1,366	763	1,370	756	1,369	756	1,375	757	1,363	773	1,344	722	2,178
Knox.....	1,613	928	1,669	804	1,692	831	1,658	784	1,805	690	1,718	756	1,686	723	2,594
Kosciusko.....	1,855	859	1,875	976	1,891	781	1,864	786	1,873	788	1,894	793	1,864	706	2,732
Lagrange.....	997	281	1,043	223	1,023	246	1,037	213	1,053	210	1,015	253	994	226	1,324
Lake.....	927	31	913	40	919	25	916	28	924	19	878	66	903	16	971
Laporte.....	1,765	427	1,799	398	1,840	348	1,784	381	1,850	329	1,841	328	1,747	352	2,260
Lawrence.....	1,051	308	918	325	970	278	1,002	325	1,091	268	1,044	299	1,013	279	1,386
Madison.....	1,620	643	1,703	538	1,826	415	1,633	543	1,850	390	1,748	499	1,832	331	2,383
Marion.....	7,132	1,472	7,180	1,339	7,303	1,181	7,109	1,329	7,460	1,064	7,382	1,128	7,180	1,085	8,604
Marshall.....	1,251	433	1,273	395	1,280	388	1,250	395	1,301	371	1,262	408	1,241	348	1,724
Martin.....	632	346	602	356	628	336	615	343	644	323	629	337	632	290	988
Monroe.....	981	357	1,002	326	1,000	320	983	331	1,000	316	891	443	964	317	1,356
Montgomery.....	1,840	704	1,841	704	1,949	594	1,808	708	1,901	651	1,833	713	1,861	599	2,637
Miami.....	1,664	585	1,709	506	1,755	470	1,693	502	1,802	426	1,768	447	1,719	409	2,323
Morgan.....	1,533	400	1,535	378	1,581	338	1,533	371	1,616	305	1,576	340	1,571	316	1,966
Newton.....	691	107	681	109	716	73	887	103	760	63	723	67	703	62	828
Noble.....	1,823	862	2,023	503	1,860	805	2,019	488	2,082	452	2,053	479	2,024	431	2,685
Ohio.....	344	80	305	116	340	81	311	108	331	81	332	91	300	104	433

Orange.....	690	336	707	308	711	312	690	313	732	203	716	310	721	255	1,039
Owens.....	903	370	895	373	960	315	892	363	915	251	892	379	787	340	1,304
Parke.....	1,688	32	1,675	425	1,786	315	1,642	425	1,775	329	1,709	383	1,043	397	2,172
Perry.....	786	183	762	206	783	178	757	200	793	170	784	184	763	159	997
Pike.....	792	515	799	495	796	500	797	486	820	480	792	508	779	479	1,307
Porter.....	951	100	972	69	977	63	964	58	993	48	976	67	960	41	1,070
Posty.....	731	382	716	390	742	361	715	358	745	358	728	366	752	312	1,136
Pulaski.....	514	323	560	263	546	284	552	254	602	224	574	250	590	194	909
Putnam.....	1,532	747	1,474	782	1,580	678	1,471	781	1,565	706	1,525	740	1,534	661	2,316
Randolph.....	2,179	220	2,170	219	2,180	174	2,167	207	2,204	184	2,180	201	2,145	164	2,437
Ripley.....	978	527	989	508	1,012	494	976	502	1,022	474	996	492	988	450	1,582
Rush.....	1,756	999	1,794	934	1,878	868	1,776	935	1,855	887	1,796	939	1,735	858	2,789
Scott.....	441	299	435	300	469	270	434	300	941	248	461	277	465	253	751
Shelby.....	1,516	807	1,745	770	1,787	735	1,733	758	1,809	707	1,789	737	1,744	691	2,555
Spencer.....	1,313	481	1,268	521	1,330	435	1,232	544	1,320	476	1,289	469	1,298	419	1,874
Stark.....	201	208	207	199	221	182	204	190	229	178	207	190	230	156	418
St. Joseph.....	2,197	411	2,297	280	2,299	280	2,276	266	2,319	254	2,302	261	2,234	233	2,662
Steuben.....	1,470	162	1,454	163	1,479	130	1,440	154	1,494	123	1,478	142	1,454	100	1,670
Sullivan.....	1,127	1,007	1,170	934	1,183	938	1,149	931	1,225	891	1,171	944	1,192	853	2,199
Switzerland.....	884	345	908	301	904	321	905	289	930	289	878	337	770	413	1,254
Tippecanoe.....	1,017	370	2,036	312	2,096	267	2,045	287	2,114	236	2,106	222	2,071	190	2,435
Tipton.....	879	583	918	520	903	546	885	523	924	515	900	539	949	442	1,484
Union.....	525	70	523	71	549	46	522	71	539	49	525	59	524	53	603
Vanderburgh.....	2,456	380	2,267	559	2,427	393	2,274	516	2,424	392	2,391	434	2,384	375	2,877
Vermilion.....	953	149	938	145	1,001	94	940	148	992	99	970	125	973	92	1,132
Vigo.....	3,129	525	3,102	533	3,214	394	3,080	522	3,221	405	3,120	517	3,156	398	3,742
Wabash.....	2,082	459	2,143	397	2,121	466	2,118	389	2,068	379	2,136	404	2,082	363	2,595
Warren.....	969	211	966	201	1,051	119	972	185	1,058	109	1,047	122	1,006	114	1,207
Warrick.....	914	723	923	717	952	684	910	705	947	688	925	717	945	619	1,672
Washington.....	852	605	881	561	875	586	877	566	893	566	832	621	869	529	1,491
Wayne.....	2,952	390	2,947	371	2,834	320	2,919	367	3,017	308	2,834	496	2,890	268	3,420
Wells.....	734	623	769	576	759	584	772	574	782	575	765	592	745	551	1,376
White.....	934	540	997	456	1,018	433	990	442	982	483	1,012	442	1,024	380	1,508
Whitley.....	1,019	639	1,033	611	1,031	607	1,018	597	1,041	596	1,039	623	1,003	560	1,580
Total.....	123,736	45,975	124,952	42,896	128,038	40,163	125,170	42,162	128,731	38,345	116,570	41,434	126,221	36,435	172,915
Majorities.....	118,761		122,056		127,875		123,008		120,386		75,136		89,786		

## THE VOTE OF MARION COUNTY ON THE SEVEN AMENDMENTS WAS AS FOLLOWS:

[*Indianapolis Journal, March 18, 1881.*]

WARDS.	First.		Second.		Third.		Fourth.		Fifth.		Sixth.		Ninth.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
1.....	287	11	288	9	291	8	290	8	291	8	290	7	285	7
2.....	421	22	423	18	422	17	413	18	430	13	431	13	410	13
3.....	355	26	301	16	350	22	351	21	356	20	360	14	351	19
4.....	243	21	240	23	241	18	235	23	242	16	241	18	242	14
5.....	263	17	268	10	267	11	265	10	266	11	268	10	269	9
6.....	390	33	402	20	400	23	403	20	402	21	399	24	393	21
7.....	306	28	301	34	310	19	301	35	315	18	313	20	305	21
8.....	203	43	200	40	205	36	206	39	214	32	214	32	209	27
9.....	264	44	262	45	272	34	252	52	252	52	276	30	261	27
10.....	212	18	214	16	215	15	212	14	215	12	216	13	216	12
11.....	297	34	307	19	308	18	307	18	312	14	312	14	304	12
12.....	237	37	250	17	243	22	249	18	249	21	252	16	250	13
13.....	210	30	212	28	214	20	204	26	215	23	215	23	207	22
14.....	254	41	246	47	249	42	243	44	254	59	252	40	245	37
15.....	82	99	80	101	86	95	82	100	87	95	88	96	86	91
16.....	111	44	115	34	122	30	113	40	124	30	126	28	118	24
17.....	164	28	125	37	163	28	154	35	166	26	164	26	160	19
18.....	123	22	124	18	128	14	119	21	129	15	126	16	124	14
19.....	153	37	160	35	163	14	163	28	173	17	177	15	169	12
20.....	137	12	211	10	216	12	212	17	214	14	213	14	212	9
21.....	225	37	225	33	226	35	226	34	230	30	227	33	221	32
22.....	145	37	144	36	137	31	144	36	148	31	154	25	143	28
23.....	194	31	196	24	198	23	192	24	197	24	195	26	194	20
24.....	163	38	167	34	169	29	162	32	168	32	170	30	168	25
25.....	141	124	136	127	151	111	134	125	152	114	150	109	148	144

## Townships—

Warren No. 1.....	75	25	74	23	72	23	74	22	81	12	74	17	74	16
Warren No. 2.....	69	50	67	51	68	51	65	51	69	49	65	50	67	49
Center No. 1.....	88	11	80	20	90	7	84	14	91	7	89	7	74	14
Center No. 2.....	94	4	94	4	93	1	92	3	94	2	97	1	98	3
Center No. 3.....	81	16	92	4	94	2	90	4	93	1	94	1	95	1
Center No. 4.....	35	3	33	6	37	2	34	3	35	3	36	2	34	2
Decatur No. 1.....	124	9	124	7	122	8	122	9	125	7	125	7	123	8
Decatur No. 2.....	67	11	67	9	65	13	67	9	69	9	69	9	65	11
Franklin No. 1.....	57	21	62	16	62	15	50	20	63	15	64	15	56	19
Franklin No. 2.....	74	42	71	43	80	35	62	42	95	11	77	38	71	42
Pike No. 1.....	44	61	52	46	54	48	51	46	83	20	57	43	50	43
Pike No. 2.....	50	27	52	25	51	26	52	23	56	21	50	24	50	23
Wayne No. 1.....	48	20	54	12	52	14	53	16	54	13	53	13	54	11
Wayne No. 2.....	67	16	73	9	72	9	73	8	75	6	76	9	72	7
Wayne No. 3.....	107	58	105	59	115	48	104	54	120	42	116	47	113	46
Perry No. 1.....	127	41	125	39	125	38	127	35	125	38	126	37	118	37
Perry No. 2.....	34	6	34	4	34	5	34	4	35	4	35	4	31	6
Washington No. 1....	44	45	45	44	46	42	44	43	47	42	46	43	47	40
Washington No. 2....	48	11	44	15	49	10	44	15	49	10	49	10	47	11
Lawrence No. 1.....	45	51	43	51	49	46	43	56	58	37	48	47	47	43
Lawrence No. 2.....	50	3	50	4	51	1	49	4	50	2	52	2	49	2
Lawrence No. 3.....	44	27	52	11	57	10	44	11	60	10	55	10	55	8

X. VOTE ON THE SUPREME COURT AND LAWYERS AMENDMENTS  
(NOVEMBER 6, 1900).

At the general election of November 6, 1900, two amendments were submitted to the electors for ratification or rejection. Amendment No. 1 fixed the membership of the Supreme Court at not less than 5 nor more than 11 judges. Amendment No. 2 authorized the General Assembly to prescribe the qualifications for the practice of law.

[*Secretary of State's Report, 1900, p. 306.*]

COUNTIES.	No. 1. For the Amendment.	No. 1. Against the Amendment.	No. 2. For the Amendment.	No. 2. Against the Amendment.
Adams.....	2,207	1,390	1,907	977
Allen.....	11,319	3,753	8,831	3,272
Bartholomew.....	3,221	1,956	2,403	1,644
Benton.....	2,246	435	1,050	366
Blackford.....	2,002	1,308	1,424	1,114
Boone.....	3,122	2,194	2,396	1,541
Brown.....	423	917	334	787
Carroll.....	2,186	1,835	1,737	1,575
Cass.....	4,666	2,474	3,580	1,916
Clark.....	3,704	1,898	2,791	1,479
Clay.....	3,574	2,836	2,417	2,516
Clinton.....	3,329	2,256	2,348	1,867
Crawford.....	783	1,607	515	1,453
Daviess.....	2,983	1,970	2,131	1,519
Dearborn.....	2,167	1,553	1,881	1,151
Decatur.....	2,821	1,285	2,059	1,061
DeKalb.....	3,276	2,086	2,504	1,431
Delaware.....	7,414	2,938	5,269	2,257
Dubois.....	1,196	2,380	976	2,196
Elkhart.....	6,851	2,455	5,347	1,817
Fayette.....	1,053	841	764	676
Floyd.....	3,496	2,048	2,771	1,630
Fountain.....	2,695	1,621	2,188	1,394
Franklin.....	1,353	1,929	1,175	1,655
Fulton.....	1,565	2,147	1,421	1,669
Gibson.....	3,661	1,927	2,880	1,625
Grant.....	7,243	3,133	5,807	2,333
Greene.....	2,664	2,641	1,865	1,957
Hamilton.....	4,726	1,806	3,826	1,549
Hancock.....	2,323	1,774	1,594	1,430
Harrison.....	1,177	2,693	987	2,357
Hendricks.....	2,813	1,673	2,353	1,323
Henry.....	3,756	1,849	3,092	1,299
Howard.....	3,493	1,999	1,667	1,786
Huntington.....	4,478	1,920	3,441	1,406
Jackson.....	2,655	2,444	1,971	2,126
Jasper.....	1,772	944	1,472	719
Jay.....	3,561	2,084	2,033	2,520
Jefferson.....	2,467	2,105	2,165	1,749
Jennings.....	1,610	1,538	1,347	1,193
Johnson.....	2,647	1,739	2,078	1,566
Knox.....	2,746	3,528	1,958	2,985
Kosciusko.....	4,308	1,515	2,962	1,123
Lagrange.....	2,180	690	1,483	550
Lake.....	4,527	1,424	3,423	987
Laporte.....	4,155	2,630	3,255	2,058
Lawrence.....	2,565	1,764	1,870	1,545



COUNTIES.	No. 1. For the Amendment.	No. 1. Against the Amendment.	No. 2. For the Amendment.	No. 2. Against the Amendment.
Madison.....	8,728	4,966	7,193	3,348
Marion.....	36,191	7,321	27,548	5,705
Marshall.....	2,898	1,792	2,068	1,669
Martin.....	1,029	1,431	911	1,181
Miami.....	3,511	2,781	2,868	2,276
Monroe.....	2,194	1,276	1,739	1,072
Montgomery.....	4,438	2,447	3,585	1,913
Morgan.....	2,567	1,503	1,845	1,355
Newton.....	1,746	585	1,515	404
Noble.....	2,965	2,096	2,522	1,349
Ohio.....	503	484	399	414
Orange.....	1,718	1,363	1,100	1,132
Owen.....	1,410	1,585	985	1,405
Parke.....	2,244	1,685	1,721	1,482
Perry.....	1,572	1,264	1,217	970
Pike.....	1,341	2,185	982	1,994
Porter.....	2,263	1,164	1,783	878
Posey.....	2,576	1,229	2,060	931
Pulaski.....	1,125	955	810	746
Putnam.....	2,646	1,997	2,146	1,644
Randolph.....	4,036	1,623	2,968	1,541
Ripley.....	1,313	2,368	1,327	1,836
Rush.....	2,189	2,243	1,822	1,786
Scott.....	733	879	583	795
Shelby.....	4,001	1,881	2,990	1,576
Spencer.....	1,472	2,329	1,127	2,033
Starke.....	1,113	656	823	501
Steuben.....	2,053	1,300	1,570	976
St. Joseph.....	7,807	2,964	5,433	2,192
Sullivan.....	2,694	2,406	1,977	2,052
Switzerland.....	998	1,361	959	1,088
Tippecanoe.....	6,141	2,286	4,345	1,829
Tipton.....	2,280	1,344	1,715	1,028
Union.....	936	528	699	429
Vanderburgh.....	9,792	2,045	7,484	1,584
Vermilion.....	1,860	1,308	1,328	1,034
Vigo.....	7,941	5,352	6,057	3,477
Wabash.....	4,747	1,526	3,602	1,252
Warren.....	1,646	956	1,389	711
Warrick.....	1,809	2,140	1,493	1,943
Washington.....	1,268	1,949	1,028	1,586
Wayne.....	6,276	2,022	4,908	1,594
Wells.....	2,843	1,524	2,271	1,238
White.....	1,862	2,187	1,653	1,708
Whitley.....	2,056	1,642	1,735	1,266
Total.....	314,710	178,960	240,031	144,072

## XI. VOTE ON THE LAWYERS AMENDMENT (NOVEMBER 8, 1910).

At the general election of November 8, 1910, an amendment authorizing the General Assembly to fix the qualifications for the practice of law was submitted to the people for adoption or rejection.

[Original Record in Secretary of State's Office.]

Counties.	For	Against.
Adams.....	755	338
Allen.....	1,765	387
Bartholomew.....	709	317

<i>Counties.</i>	<i>For</i>	<i>Against.</i>
Benton.....	698	154
Blackford.....	303	78
Boone.....	840	249
Brown.....	98	123
Carroll.....	934	353
Cass.....	1,297	537
Clark.....	462	326
Clay.....	861	646
Clinton.....	682	275
Crawford.....	72	268
Daviess.....	736	224
Dearborn.....	385	65
Decatur.....	715	99
DeKalb.....	486	92
Delaware.....	600	204
Dubois.....	...	...
Elkhart.....	2,217	464
Fayette.....	378	168
Floyd.....	836	327
Fountain.....	439	132
Franklin.....	328	77
Fulton.....	...	...
Gibson.....	451	184
Grant.....	2,414	1,127
Greene.....	501	246
Hamilton.....	931	193
Hancock.....	618	196
Harrison.....	261	197
Hendricks.....	360	237
Henry.....	548	106
Howard.....	454	136
Huntington.....	573	105
Jackson.....	439	213
Jasper.....	259	55
Jay.....	1,125	431
Jefferson.....	360	113
Jennings.....	193	133
Johnson.....	193	133
Knox.....	615	202
Kosciusko.....	608	85
Lagrange.....	308	54
Lake.....	2,023	253
Laporte.....	1,009	328
Lawrence.....	979	483
Madison.....	1,096	435
Marion.....	4,379	580
Marshall.....	503	29
Martin.....	110	113
Miami.....	447	152
Monroe.....	568	116
Montgomery.....	...	...
Morgan.....	262	91
Newton.....	128	15
Noble.....	962	205
Ohio.....	71	6
Orange.....	121	83
Owen.....	340	185
Parke.....	...	...
Perry.....	275	278
Pike.....	323	316
Porter.....	386	41
Posey.....	464	102

<i>Counties.</i>	<i>For.</i>	<i>Against.</i>
Pulaski.....	317	107
Putnam.....	568	310
Randolph.....	467	211
Ripley.....	413	133
Rush.....	...	...
Scott.....	132	36
Shelby.....	1,116	305
Spencer.....	164	212
Starke.....	330	40
Steuben.....	588	100
St. Joseph.....	4,318	674
Sullivan.....	486	161
Switzerland.....	74	15
Tippecanoe.....	1,548	260
Tipton.....	594	87
Union.....	153	21
Vanderburgh.....	1,609	207
Vermilion.....	...	...
Vigo.....	1,253	66
Wabash.....	1,346	224
Warren.....	213	66
Warrick.....	266	851
Washington.....	209	139
Wayne.....	1,065	192
Wells.....	374	108
White.....	...	...
Whitley.....	510	109
Totals.....	60,357	18,494

## XII. CALLING A CONSTITUTIONAL CONVENTION (NOVEMBER 3, 1914).

The question of calling a constitutional convention was submitted to the electors on November 3, 1914. The following is the vote as returned to the Secretary of State.

[*Secretary of State's Report, 1914, p. 168.*]

<i>Counties.</i>	<i>Constitutional Convention.</i>	
	<i>Yes.</i>	<i>No.</i>
Adams.....	2,125	2,469
Allen.....	6,363	10,061
Bartholomew.....	1,737	4,231
Benton.....	1,102	1,595
Blackford.....	1,552	1,785
Boone.....	1,503	3,983
Brown.....	232	1,190
Carroll.....	1,641	3,026
Cass.....	3,913	5,188
Clark.....	2,343	4,140
Clay.....	3,077	3,471
Clinton.....	2,589	4,224
Crawford.....	703	1,704
Daviess.....	1,825	4,298
Dearborn.....	1,066	3,995
Decatur.....	1,891	3,049
DeKalb.....	2,773	3,021
Delaware.....	6,126	4,693
Dubois.....	829	3,626
Elkhart.....	6,267	4,888

*Constitutional Convention.*

<i>Counties.</i>	<i>Yes.</i>	<i>No.</i>
Fayette.....	1,285	2,700
Floyd.....	2,413	4,053
Fountain.....	2,938	2,118
Franklin.....	916	2,669
Fulton.....	1,582	2,910
Gibson.....	2,229	4,656
Grant.....	6,450	5,578
Greene.....	3,140	5,008
Hamilton.....	2,579	3,789
Hancock.....	1,577	3,008
Harrison.....	1,204	3,288
Hendricks.....	1,894	3,352
Henry.....	2,866	3,660
Howard.....	4,006	3,806
Huntington.....	3,964	3,434
Jackson.....	1,349	3,711
Jasper.....	1,198	1,869
Jay.....	2,346	3,606
Jefferson.....	1,769	3,139
Jennings.....	1,130	2,259
Johnson.....	2,173	2,765
Knox.....	3,163	6,282
Kosciusko.....	2,707	3,450
Lagrange.....	1,192	2,016
Lake.....	5,973	6,290
Laporte.....	3,256	7,073
Lawrence.....	2,873	2,408
Madison.....	6,918	6,468
Marion.....	22,790	20,991
Marshall.....	2,756	3,011
Martin.....	806	2,053
Miami.....	3,264	3,962
Monroe.....	1,789	3,549
Montgomery.....	2,205	5,428
Morgan.....	1,655	3,656
Newton.....	509	840
Noble.....	2,556	3,344
Ohio.....	177	893
Orange.....	1,028	2,251
Owen.....	1,516	1,689
Parke.....	2,071	2,827
Perry.....	485	2,941
Pike.....	1,034	2,879
Porter.....	2,290	2,402
Posey.....	826	3,627
Pulaski.....	1,130	1,878
Putnam.....	1,820	3,236
Randolph.....	3,042	3,868
Ripley.....	728	3,979
Rush.....	1,775	3,508
Scott.....	429	1,338
Shelby.....	2,244	4,529
Spencer.....	1,189	3,553
Starke.....	1,053	1,762
Steuben.....	955	1,783
St. Joseph.....	6,898	8,219
Sullivan.....	3,618	3,243
Switzerland.....	815	1,689
Tippecanoe.....	2,700	5,802
Tipton.....	1,511	2,950

<i>Counties.</i>	<i>Constitutional Convention.</i>	
	<i>Yes.</i>	<i>No.</i>
Union.....	670	1,086
Vanderburgh.....	5,280	7,373
Vermilion.....	1,793	3,106
Vigo.....	7,785	5,427
Wabash.....	3,150	3,444
Warren.....	1,077	1,588
Warrick.....	1,141	2,991
Washington.....	817	3,124
Wayne.....	5,044	5,684
Wells.....	2,447	2,041
White.....	1,570	3,020
Whitley.....	1,955	2,381
Totals.....	235,140	338,947

## XIII. LIST OF DELEGATES TO CONSTITUTIONAL CONVENTION OF 1816.

Badollet, John...	Knox.
Baird, Patrick.....	Wayne.
Benefiel, John <sup>2</sup> .....	Knox.
Boone, John.....	Harrison.
Brownlee, James.....	Franklin.
Carr, Thomas.....	Clark.
Cotton, William.....	Switzerland.
Cox, Jeremiah.....	Wayne.
Cull, Hugh.....	Wayne.
De Pauw, John.....	Washington.
Devin, Alexander.....	Gibson.
Dill, James.....	Dearborn.
Eads, William H.....	Franklin.
Ferris, Ezra.....	Dearborn.
Floyd, Davis.....	Harrison.
Graham, John K.....	Clark.
Graham, William.....	Washington.
Grass, Daniel <sup>3</sup> .....	Warrick.
Hanna, Robert.....	Franklin.
Holman, Joseph.....	Wayne.
Hunt, Nathaniel.....	Jefferson.
Jennings, Jonathan <sup>4</sup> .....	Clark.
Johnson, John.....	Knox.
Lane, Daniel C.....	Harrison.

<sup>1</sup>Forty-one of the 43 delegates appeared at the opening session at 10 o'clock, on June 10, and presented their credentials. As soon as the Convention was organized, a Committee on Elections was appointed. At the beginning of the afternoon session of June 10, Boone appeared and presented his credentials. During the same afternoon the credentials of the 42 members present were submitted to the Committee on Elections, and this committee reported on June 11. Parke appeared on June 14, and his credentials were approved by the committee on the same day.

<sup>2</sup>Spelled also Bennefiel.

<sup>3</sup>On June 19, Grass, being indisposed and unable to attend, was given leave of absence for the remainder of the session.

<sup>4</sup>Elected President of the Convention.



### XIII. LIST OF DELEGATES TO CONSTITUTIONAL CONVENTION OF 1816— Continued.

Lemon, James.....	Clark.
Lowe, William.....	Washington.
Lynn, Dan <sup>5</sup> .....	Posey.
McCarty, Enoch <sup>6</sup> .....	Franklin.
McIntire, Robert.....	Washington.
Manwaring, Solomon.....	Dearborn.
Maxwell, David H.....	Jefferson.
Milroy, Samuel <sup>7</sup> .....	Washington.
Noble, James.....	Franklin.
Parke, Benjamin.....	Knox.
Pennington, Dennis.....	Harrison.
Polke, Charles.....	Perry.
Polke, William.....	Knox.
Rapp, Frederick.....	Gibson.
Robb, David.....	Gibson.
Scott, James.....	Clark.
Shields, Patrick.....	Harrison.
Smith, James.....	Gibson.
Smock, Samuel.....	Jefferson.

### XIV. APPORTIONMENT OF DELEGATES IN CONSTITUTIONAL CONVENTION OF 1816.

There were 13 counties in Indiana Territory in 1816, which, by the terms of the Enabling Act, were entitled to 43 delegates to the Constitutional Convention, apportioned, on the basis of population, as follows:

<i>County.</i>	<i>White Males of 21 Years and Upwards.</i>	<i>Total Population.</i>	<i>Delegates.</i>
Clark.....	1,387	7,150	5
Dearborn.....	902	4,424	3
Franklin.....	1,430	7,370	5
Gibson.....	1,100	5,330	4
Harrison.....	1,056	6,975	5
Jefferson.....	874	4,270	3
Knox.....	1,391	8,068	5
Perry.....	350	1,720	1
Posey.....	320	1,619	1
Switzerland.....	377	1,832	1
Warriek.....	280	1,415	1
Washington.....	1,420	7,317	5
Wayne.....	1,225	6,407	4

<sup>5</sup>Lynn's seat was contested by Peter Wilkinson. The Committee on Contested Elections, after an examination of the documents, reported that Lynn was legally elected, and he was allowed to sit.

<sup>6</sup>Spelled also McCarty.

<sup>7</sup>Spelled also Millroy.

## XV. DELEGATES TO CONSTITUTIONAL CONVENTION OF 1850.

The Constitutional Convention of 1850 consisted of 150 delegates: 50 were known as senatorial delegates (indicated by (S) in the table), and 100 were known as representative delegates (indicated by (R) in the table). All of the delegates were present at the first roll call except Jones of Bartholomew, Conduit, Colfax, Ritchey, Taylor, Hovey, and Blythe. James Ritchey, Schuyler Colfax, Alvin P. Hovey, and James E. Blythe appeared on the afternoon of October 7, and produced their credentials (Conv. J., p. 8); Edmund D. Taylor appeared on October 8 (Conv. J., p. 12); Smith Jones on October 12 (Conv. J., p. 48); and Alexander B. Conduit on October 22 (Conv. J., p. 118). George W. Carr was elected President. Elias S. Terry of Daviess County resigned on account of ill health, and was succeeded by R. A. Clements. William Holliday, the delegate from Orange County, served 76 days, and W. R. Johnson served 24 days. James Osborne of Union County succeeded Benjamin Brookbank. James Vanbenthusen of Shelby County died, and was succeeded by James Elliott.

<i>Name.</i>	<i>County.</i>	<i>Politics.</i>
Anthony, Samuel J. (S).....	Lake, Laporte, and Porter.....	Dem.
Alexander, Charles (R).....	Pike.....	Dem.
Allen, Hiram (S).....	Carroll and Clinton.....	Whig
Badger, Oliver P. (R).....	Putnam.....	Whig
Ballingall, George H. (R).....	Henry.....	Whig
Barbour, Cromwell W. (R)....	Vigo.....	Whig
Bascom, Erastus K. (R).....	Adams and Wells.....	Dem.
Beach, Walter E. (R).....	Elkhart.....	Dem.
Beard, John (R).....	Wayne.....	(Free Soil) Whig
Beeson, Othniel (R).....	Wayne.....	Dem.
Berry, George (S).....	Franklin.....	Dem.
Bicknell, Thompson P. (R)....	Noble.....	Whig
Biddle, Horace P. (S).....	Cass, Howard, and Pulaski.....	Whig
Blythe, James E. (R).....	Vanderburgh.....	Whig
Borden, James W. (S).....	Allen, Adams, and Wells.....	Dem.
Bourne, Thomas I. (R).....	Vigo.....	Whig
Bowers, Henry J. (R).....	Ripley.....	Whig
Bracken, William (R).....	Rush.....	Dem.
Bright, Michael G. (R).....	Jefferson.....	Dem.
Brookbank, Benjamin F. (R)...	Union.....	Dem.
Bryant, James R. M. (R).....	Warren.....	Whig
Butler, Thomas (R).....	Greene.....	Dem.
Carr, George W. (S).....	Lawrence.....	Dem.
Carr, John F. (S).....	Jackson and Scott.....	Dem.
Carter, Horace E. (R).....	Montgomery.....	Dem.
Chandler, Shadrach (R).....	Brown.....	Dem.
Chapman, Jacob P. (R).....	Marion.....	Dem.
Chenowith, Thomas (R).....	Vermilion.....	Dem.
Clark, Othniel L. (R).....	Tipppecanoe.....	Whig
Clark, Haymond W. (R).....	Hamilton.....	Whig
Clements, Richard A. (S).....	Daviess.....	Dem.
Coats, Joseph (S).....	Fountain.....	Dem.

<i>Name.</i>	<i>County.</i>	<i>Politics.</i>
Cole, Albert (S).....	Hamilton.....	Whig
Colfax, Schuyler (R).....	St. Joseph.....	Whig
Conduit, Alexander B. (R)...	Morgan.....	Whig
Cookerly, Grafton F. (R).....	Vigo.....	Dem.
Crawford, James (S).....	Morgan.....	Whig
Crumbaker, Daniel (R).....	Lake and Porter.....	Dem.
Davis, Samuel (R).....	Parke.....	Whig
Davis, John (R).....	Madison.....	Whig
Davis, Oliver P. (S).....	Parke and Vermilion .....	Dem.
Dick, James (S).....	Knox.....	Dem.
Dobson, David M. (S).....	Owen and Greene.....	Dem.
Dunn, William M. (R).....	Jefferson.....	Whig
Dunn, John P. (S).....	Perry, Spencer, and Warrick.....	Dem.
Duzan, Mark A. (R).....	Boone.....	Dem.
Edmonston, Benjamin R. (R).....	Dubois.....	Dem.
Elliott, James (R).....	Shelby.....	Dem.
Farrow, Alexander S. (R).....	Putnam.....	Whig
Fisher, Jacob (R).....	Clark.....	Dem.
Foley, James B. (S).....	Decatur.....	Dem.
Foster, William C. (R).....	Monroe.....	Dem.
Frisbie, Samuel (R).....	Perry.....	Whig
Garvin, James (R).....	Kosciusko.....	Dem.
Gibson, Thomas W. (R).....	Clark.....	Dem.
Gootee, Thomas (R).....	Martin.....	Dem.
Gordon, George A. (R).....	Cass and Howard.....	Dem.
Graham, John A. (R).....	Miami.....	Dem.
Graham, Christopher C. (R).....	Warrick.....	Dem.
Gregg, Milton (S).....	Jefferson.....	Whig
Haddon, William R. (S).....	Sullivan, Clay, and Vigo.....	Dem.
Hall, Samuel (R).....	Gibson.....	Whig
Hamilton, Allen (R).....	Allen.....	Whig
Harbolt, Jonathan (R).....	Benton, Jasper, Pulaski, and White.....	Dem.
Hardin, Franklin (R).....	Johnson.....	Dem.
Hawkins, Nathan B. (S).....	Blackford, Jay, and Randolph.....	Whig
Helm, Jefferson (R).....	Rush.....	Whig
Helmer, Melchert (R).....	Lawrence.....	Whig
Hendricks, Thomas A. (S).....	Shelby.....	Dem.
Hitt, Willis W. (R).....	Knox.....	Whig
Hogin, Benoni C. (R).....	Grant.....	Whig
Holliday, William (R).....	Orange.....	Dem.
Holman, William S. (S).....	Dearborn.....	Dem.
Hovey, Alvin P. (R).....	Posey.....	Dem.
Howe, John B. (R).....	Lagrange.....	Whig
Huff, Wilson (R).....	Spencer.....	Dem.
Johnson, John D. (R).....	Dearborn.....	Dem.
Johnson, William D. (R).....	Orange.....	Dem.
Jones, Smith (R).....	Bartholomew.....	Dem.
Kelso, Daniel (R).....	Ohio and Switzerland.....	Whig
Kent, Phineas M. (S).....	Floyd.....	Dem.

<i>Name.</i>	<i>County.</i>	<i>Politics.</i>
Kendall, Robert C. (S).....	Warren, Benton, Jasper, and White...	Whig
Kendall, Harrison (S).....	Miami and Wabash.....	Dem.
Kilgore, David (R).....	Delaware.....	Whig
Kinley, Isaac (S).....	Henry.....	Dem.
Lockhart, James (S).....	Posey and Vanderburgh.....	Dem.
Logan, Ezekiel D. (R).....	Washington.....	Dem.
Maguire, Douglass (R).....	Marion.....	Whig
March, Walter (S).....	Grant and Delaware.....	Dem.
Mather, Joseph H. (S).....	Elkhart and Lagrange.....	Whig
Mathes, John (R).....	Harrison.....	Dem.
May, Edward R. (R).....	DeKalb and Steuben.....	Dem.
McClelland, Beattie (R).....	Randolph.....	Dem.
McFarland, Joel B. (S).....	Tippecanoe.....	Dem.
McLean, William (R).....	Boone.....	Dem.
Miller, Hugh (S).....	Marshall, Fulton, and St. Joseph.....	Dem.
Miller, Smith (S).....	Dubois, Gibson, and Pike.....	Dem.
Miller, Cornelius J. (R).....	Clinton and Tipton.....	Dem.
Milligan, Dixon (R).....	Blackford and Jay.....	Dem.
Milroy, Robert H. (R).....	Carroll.....	Dem.
Mooney, Samuel P. (R).....	Jackson.....	Dem.
Moore, George W. (R).....	Owen.....	Dem.
Morgan, Jesse (S).....	Rush.....	Whig
Morrison, John I. (S).....	Washington.....	Dem.
Morrison, Alexander F. (S).....	Marion.....	Dem.
Mowrer, Daniel (R).....	Henry.....	Dem.
Murray, Elias (S).....	Huntington, Kosciusko, and Whitley.....	Whig
Nave, Christian C. (R).....	Hendricks.....	Dem.
Newman, John S. (S).....	Wayne.....	Whig
Niles, John B. (R).....	Laporte.....	Whig
Nofsinger, William R. (R).....	Parke.....	Dem.
Osborne, James (R).....	Union.....	Dem.
Owen, Robert Dale (R).....	Posey.....	Dem.
Pepper, Samuel (R).....	Crawford.....	Whig
Pepper, Abel C. (S).....	Ohio and Switzerland.....	Dem.
Pettit, John (R).....	Tippecanoe.....	Dem.
Prather, Hiram (S).....	Bartholomew and Jennings.....	Whig
Radiden, James (R).....	Wayne.....	Whig
Read, James G. (S).....	Clark.....	Dem.
Read, Daniel (S).....	Monroe and Brown.....	Dem.
Ristine, Joseph (R).....	Fountain.....	Dem.
Ritchey, James (S).....	Johnson.....	Dem.
Robinson, Joseph (R).....	Decatur.....	Whig
Schoonover, Rodolphus (R).....	Washington.....	Dem.
Shannon, David A. (R).....	Montgomery.....	Dem.
Sherrod, William F. (S).....	Orange and Crawford.....	Dem.
Shoup, George G. (R).....	Franklin.....	Dem.
Sims, Stephen (R).....	Clinton and Tipton.....	Whig
Smiley, Ross (R).....	Fayette.....	Dem.
Smith, Hezekiah S. (R).....	Scott.....	Dem.

<i>Name.</i>	<i>County.</i>	<i>Politics.</i>
Smith, Thomas (S).....	Ripley.....	Dem.
Snook, Henry F. (S).....	Montgomery.....	Dem.
Spann, John L. (R).....	Jennings.....	Dem.
Steele, William (R).....	Wabash.....	(Free Soil) Dem.
Stevenson, Alexander C. (S)...	Putnam.....	Whig
Tague, George (R).....	Hancock.....	Dem.
Tannehill, Zachariah (R)....	Bartholomew.....	Dem.
Taylor, Edmund D. (R).....	Laporte.....	Dem.
Terry, Elias S. (S).....	Daviess.....	Whig
Thomas, William W. (R)....	Fayette.....	Whig
Thornton, Henry P. (R).....	Floyd.....	Whig
Todd, Henry G. (S).....	Hendricks.....	Whig
Trembly, Daniel (S).....	Fayette and Union.....	Dem.
Vanbenthussen, James (R)....	Shelby.....	Dem.
Wallace, David (R).....	Marion.....	Whig
Walpole, Thomas D. (S).....	Hancock and Madison.....	Whig
Watts, Johnson (R).....	Dearborn.....	Whig
Wheeler, Amzi L. (R).....	Marshall, Fulton, and Starke.....	Dem.
Wiley, Spencer (R).....	Franklin.....	Dem.
Wolfe, Benjamin (R).....	Sullivan.....	Dem.
Work, Robert (S).....	DeKalb, Noble, and Steuben.....	Dem.
Wunderlich, Jacob (R).....	Huntington and Whitley.....	Dem.
Yocum, Francis B. (R).....	Clay.....	Dem.
Zenor, John (S).....	Harrison.....	Whig

#### XVI. EXPENSES OF THE CONSTITUTIONAL CONVENTION OF 1850.

The total cost of the Constitutional Convention of 1850 was \$88,280.39. For convenience of classification, this amount may be divided into the following items: (1) *Per Diem of Delegates.* The Convention consisted of 150 delegates. (Act of January 18, 1850. Laws 34th Session, 29.) Owing to resignations and one death, 154 men actually served as delegates during the sittings of the Convention. The Convention assembled on October 7, 1850, and adjourned on February 10, 1851. The actual number of days comprehended between these two dates is as follows: October, 25; November, 30; December, 31; January, 31; and February, 10. Total, 127. Each delegate received \$3 per day "while actually attending upon the sittings of said convention." One hundred and twenty-seven days at \$3 per day is \$381. There were 146 delegates who attended the full session of the Convention and received \$381. Elias S. Terry, the delegate from Daviess County, served 65 days and resigned on account of ill health. R. A. Clements was elected in place of Terry, and served 52 days. James Vanbenthussen, the delegate from Shelby County, died during the sittings of the Convention, after having served 40 days. James Elliott was elected in place of Vanbenthussen, and served 74 days. William Holliday, the delegate from Orange County, served 76 days, W. R. Johnson from Orange County served 24 days, Benjamin F. Brookbank of Union County served 107 days, and James Osborne of Union County served 15 days. (2) *Mileage of Delegates.* The delegates were "allowed the like compensation for their travel as members



of the General Assembly," which was 12 cents per mile. (3) Compensation of Secretaries and Assistants. The Convention, when assembled, was authorized to "organize by electing a president and all other officers necessary", and "their secretaries, officers, and attendants shall be paid the same compensation as the officers of the General Assembly of this State are paid for similar services." (4) Compensation of Door-keepers and Assistants. (5) Compensation of Sergeant-at-Arms and Assistants. (6) Stenographer. By the Act of 1850, the official stenographer was to be appointed by the Governor, and on October 9, in a communication to the Convention, Governor Wright announced that he had "appointed and commissioned Harvey Fowler stenographer to report the Debates of said Convention". (7) Printing and Binding. (8) Miscellaneous Expenses.

1. *Per Diem of Delegates.*

146 delegates at \$381 each.....	\$55,626.00
Elias S. Terry served 65 days.....	195.00
R. A. Clements served 52 days.....	156.00
James Vanbenthusen served 40 days.....	120.00
James Elliott served 74 days.....	222.00
William Holliday served 76 days.....	228.00
W. R. Johnson served 24 days.....	72.00
Benjamin F. Brookbank served 107 days.....	321.00
James Osborne served 15 days.....	45.00

Total per diem of delegates.....\$56,985.00

2. *Mileage of Delegates.*..... \$3,411.40

3. *Compensation of Secretaries and Assistants.*

W. H. English, Principal Secretary.....	\$1,024.00
Three Assistant Secretaries.....	1,588.00
Six Assistant Clerks.....	429.00
One Clerk to Committee.....	30.00
Messenger to Secretary's Room.....	222.00
Double Index to Journal.....	200.00
Enrolling Constitution.....	100.00

Total Compensation of Secretaries and Assistants..... \$3,593.00

4. *Compensation of Door-keepers and Assistants.*

S. J. Johnson, Principal Door-keeper.....	\$387.50
Ten Assistant Door-keepers.....	2,739.00
Three Woodmen.....	444.09
One Wood-sawyer.....	130.00

Total Compensation of Door-keepers and Assistants.... \$3,700.59

5. *Compensation of Sergeant-at-Arms and Assistant.*

S. McKenzie, Sergeant-at-Arms.....	\$381.00
C. S. Horton, Assistant Sergeant-at-Arms.....	30.00

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Total Compensation of Sergeant-at-Arms and Assistant.      \$411.00

6. *One Stenographer, Reporting Debates.....* \$5,166.007. *Printing and Binding.*

Printing Journal.....	\$1,220.14
Printing First Volume of Debates.....	1,485.09
Printing Second Volume of Debates.....	1,197.47
Publishing Debates in State Journal, Volume I..	692.24
Publishing Debates in State Journal, Volume II.	736.19
Printing Index.....	57.13
Printing Constitution, paper and delivery.....	1,731.80
Bill of Printing.....	556.49
Bill for pressing sheets.....	25.50
State Sentinel for delegates.....	158.00
State Journal for delegates.....	159.00
Bill for Binding.....	972.05

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Total Printing and Binding expense..... \$8,991.10

8. *Miscellaneous Expenses.*

Stationery and candles.....	\$1,118.68
Telegraphic dispatches.....	12.03
Rent of Masonic Hall, carpets and fittings.....	704.50
Spittoons.....	12.24
Copy of Deed of Tippecanoe Battle Ground....	1.75
Use and repair of clock.....	8.00
Blackening stoves.....	2.00
Bill of sundries.....	81.69
Postage.....	19.34
Gavel for President.....	1.00
Bill of Binding.....	191.65
Scavenger.....	60.00
Committee of 4 Delegates to Madison at \$10 each,	40.00
Services of John S. Newman, Delegate, on	
Committee.....	3.00
Services of D. Read and R. D. Owen, Delegates,	
on Committee on Engrossment.....	90.00
Services of R. D. Owen, Delegate, on Committee	
of Publication.....	30.00
Services of Jacob P. Chapman on Committee on	
Accounts.....	110.00
Per diem of G. W. Carr, President, from Febru-	
ary 11 to June 1, 1851.....	333.00

8. *Miscellaneous Expenses*—Continued.

John B. Dillon, extra services as State Librarian,	\$126.00
James P. Drake, extra services as State Treasurer,	127.00
E. W. H. Ellis, extra services as Auditor of State.	127.00
Charles H. Test, extra services as Secretary of State .....	48.00
Sundry expenditures of W. H. English and G. W. Carr in superintending printing of Constitution, etc.....	82.57
Funeral expenses of J. Vanbenthusen.....	83.50
Crape for funeral.....	12.10
Total Miscellaneous Expenses.....	\$3,425.05

The Total Expense of the Constitutional Convention as audited to January 7, 1852.....	\$85,683.14
The Report of the Auditor of State for the fiscal year ending October 31, 1852, showed the following additional unitemized amount.....	2,597.25
Grand Total.....	\$88,280.39

## NO. XVII. STATUTORY METHOD OF SUBMITTING CONSTITUTIONAL AMENDMENTS.

The most recent statutory method prescribed for submitting constitutional amendments to the electors is set forth in the act of 1911, page 534. There are, however, two briefer provisions which have been in force for some years, and, although usually superseded by special laws providing for the submission of specific amendments, are still valid in their operation. The first of these acts is section 25 of the general election law of 1889 which requires the Secretary of State to certify the amendment to each county clerk who in turn is required to give notice of the vote to be had on such amendment.

[*Laws, 1889, p. 169.*]

Sec. 25. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the State for popular vote, the Secretary of State shall duly, and not less than thirty days before election, certify the same to the clerk of each county in the State, and the clerk of each county shall include the same in the publication provided for in Section 23 in this act.\*

Section 62 of the same act prescribes the duty of the State Board of Election Commissioners in preparing ballots for an election at which a constitutional amendment is to be submitted and the method the elector must follow in marking his ballot.

\*Section 23 prescribes the form and substance of the election publication which the county clerk is required to give.

[*Laws, 1889, p. 184.*]

Sec. 62. Whenever any constitutional amendment or other question is required by law to be submitted to popular vote, if all the electors of the State are entitled to vote on such question, the State Board of Election Commissioners shall cause a brief statement of the same to be printed on the State ballots, and the words "yes" and "no" under the same, so that the elector may indicate his preference by stamping at the place designated in front of either word. If the question is required by law to be voted on by the electors of any district or division of the State the Board or Boards of Election Commissioners of the county or counties, including or included in such division or district, shall cause similar provision to be made on the local ballots. In case any elector shall not indicate his preference by stamping in front of either word the ballot as to such question shall be void and shall not be counted.

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